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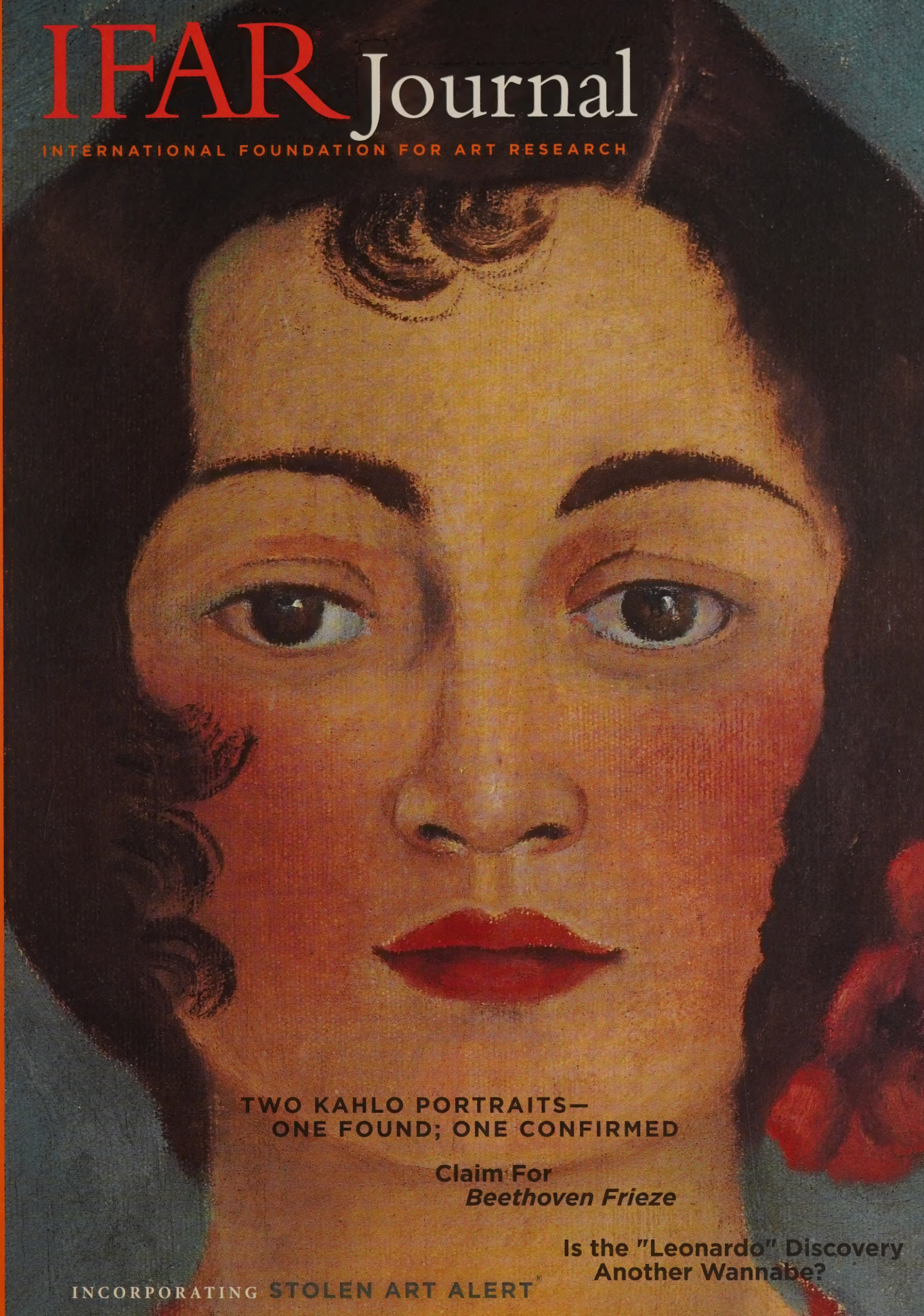

TWO KAHLO PORTRAITS—
ONE FOUND; ONE CONFIRMED

Claim For
Beethoven Frieze

Is the "Leonardo" Discovery
Another Wannabe?

INCORPORATING STOLEN ART ALERT®

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COVER: FRIDA KAHLO. *Woman in White,* 1929, detail. Oil on canvas, 119 x 81 cm (47 x 32 inches). Private Collection, Berlin. © 2013 Banco de México Diego Rivera Frida Kahlo Museums Trust, Mexico, D.F. / Artists Rights Society (ARS), New York. See article on p. 22.

IS A PORTRAIT FOUND IN A SWISS VAULT A MISSING LEONARDO DA VINCI OR ANOTHER WANNABE?

This seems to be the era of Leonardo "discoveries" and "rediscoveries," many still controversial. Now, on the heels of *La Bella Principessa* and the *Salvator Mundi,* both covered extensively by IFAR,[1] and only the latter being generally accepted, comes the latest Leonardo "discovery," **(FIG. 1)** a profile portrait of a woman closely resembling the artist's chalk sketch of Isabella d'Este in the Louvre **(FIG. 2).**

FIGURE 1. Newly discovered Isabella d'Este painting. Oil on canvas, 24 x 18 inches (61 x 45.7 cm).

A barrage of newspaper publications around the world trumpeted the new discovery in early October, as if the finding of an autograph "accepted" painting by Leonardo were already a *fait accompli.* But while at least one noted Leonardo specialist, Carlo Pedretti, Professor Emeritus at UCLA, has pronounced the work authentic, the press campaign seems to have been premature. The jury, in fact, is still out, and there is far from universal consensus that the painting is by Leonardo. If the new portrait *is* eventually accepted, it will be one of no more than about twenty paintings generally accepted to be by the master's hand.

"But, while at least one noted Leonardo specialist, Carlo Pedretti ... has pronounced the work authentic, the press campaign seems to have been premature."

Details have been emerging slowly about the new "Leonardo": here is what we know so far. The painting, a 24 x 18 inch oil on canvas half-length profile portrait of a woman in the guise of St. Catherine, is clearly based on Leonardo's famous red and black chalk sketch of Isabella d'Este in the Louvre; the subjects wear the same hairstyle and off-the-shoulder striped dress, and make the same pointing gesture with the right hand. When the new discovery was first announced in the Italian newspaper *Il Corriere della Sera,*[2] it was hailed as the answer to 500 years of scholarly speculation as to whether Leonardo had ever made good on his promise to Isabella to make a painted version of her portrait.

FIGURE 2. LEONARDO DA VINCI, ***Portrait of Isabella d'Este,* sketch (cartoon), 1499-1500. Sanguine and chalk on paper, 24 x 18 5/16 inches (61 x 46.5 cm). (Louvre, Paris.)**

The newly found painting belongs to an unidentified Italian family living in Switzerland, whose grandparents are said to have purchased it sometime

1 See Lisa Duffy-Zeballos and Shima Majidi, "A New Leonardo? In the Courts of Scholarly Opinion — and Law — the Jury is Still Out," *IFAR Journal,* Vol. 12, no. 1 (2010), pp. 6-11; Martin Kemp, "News from Leonardo: Do the Ayes Have It?", *IFAR Journal,* Vol. 13, no. 4 (2013), pp. 36-53, an edited version of an *IFAR Evening* public lecture delivered on May 7, 2012; and Sharon Flescher, "*Marchig* 'Leonardo' Case Ends; Scholarly Debate Goes On," *IFAR Journal,* Vol. 13, no. 4 (2013), p.13.

2 "Ritrovato dopo 500 anni il meravigilioso ritratto che Leonardo da Vinci fece a Isabella d'Este," *Corriere della Sera* (Oct. 4, 2013).

during the nineteenth century along with approximately 400 other artworks, all of which are stored in a vault in Turgi, Switzerland. Although this relatively recent acquisition was made clear in Italian press reports, it was not initially cited in articles in the English language press, giving rise to some early speculation that the portrait had an older and more established provenance.

The painting's lack of provenance does not rule it out as a possible Leonardo. In fact, the provenance of the Louvre sketch (actually a life-size cartoon that was pricked along the contour lines and dusted, or "pounced," to make duplicates), on which the portrait is based, can only be traced as far back as the eighteenth century, although it is universally accepted as a work by the Renaissance master. In the absence of a convincing ownership history, however, other factors in determining the work's authenticity—connoisseurship, scientific analysis, and art historical documentation—assume even greater significance. To this end, the painting's owners contacted Professor Pedretti several years ago to help establish its *bona fidis* as a long-lost Leonardo. Now, after examining the painting for three and a half years, Pedretti has finally announced that he has "no doubt that the portrait is a Leonardo,"[3] adding that the master's handiwork is particularly apparent in the figure's face.

"The painting's canvas support is an even bigger hurdle since all of Leonardo's known easel paintings were painted on panel (although a few have since been transferred to canvas)."

Pedretti's opinion is bolstered by the results of preliminary scientific testing, the details of which have yet to be made public. Radiocarbon tests of the pigments and canvas conducted at the University of Arizona date the painting to between 1460 and 1650, indicating at least that it is not a modern fake. Nevertheless, the almost 200-year spread places the work not only within Leonardo's lifetime, but well within the lifetimes of generations of his students and imitators.

The painting's canvas support is an even bigger hurdle since all of Leonardo's known easel paintings were painted on panel (although a few have since been transferred to canvas). As Martin Kemp, Professor Emeritus at Oxford and a prominent Leonardo expert, told the *Daily Telegraph,* (Oct. 4, 2013) "Canvas was not used by Leonardo or anyone in his production line."

More positive are the initial results of the paint analysis, which purportedly show (the full reports have not been made public) that the pigments and primer are consistent with paints used by Leonardo in other works. Certain details of the painting, however, notably the figure's tiara and palm frond, which do not appear in the Louvre sketch, have apparently not yet been examined even to determine whether they are later additions by a different hand, a question that Pedretti hopes will be answered with further investigation.

LEONARDO AND ISABELLA

What, if any, is the documentary evidence for the Leonardo attribution, or, for that matter, for the argument that Leonardo actually *painted* a portrait of Isabella d'Este after completing his drawing? The circumstances surrounding Leonardo's brief residence in Mantua and his drawing of the powerful Isabella, Marchesa of Mantua, are well known. In 1499, after fleeing the Milanese court of the recently exiled Ludovico Sforza (*Il Moro*) and Beatrice d'Este, Leonardo stopped over in Mantua at the court of Francesco Gonzaga and Isabella d'Este, Beatrice's sister. Having heard of Leonardo's reputation at her sister's court in Milan, Isabella eagerly commissioned Leonardo to paint *her* portrait. While Leonardo executed

[3] Ibid.

a preparatory drawing, he evidently neglected to execute the painted portrait before departing for Venice in 1500, as correspondence shows that the Marchesa and her advisors continued to harangue him for the painting over the next six years.

Although there are hints in letters and other documents that Leonardo *could* have painted a portrait of Isabella after he left Mantua, there is no evidence that he did so, despite the fact that some press reports have speculated that the newly discovered painting is the same Leonardo portrait seen by Cardinal Luigi d'Aragona in the Château de Blois in 1517, and described by the Cardinal's secretary in his diary as a "painting in oil of a certain lady of Lombardy." It is highly unlikely, however, that the unnamed "Lombard lady" was Isabella d'Este, since Isabella was the Cardinal's cousin, and he surely would have recognized her likeness.[4]

While there is no documentation that Leonardo ever *painted* Isabella d'Este, we know he produced at least one drawing of her around 1500 while in Mantua. This drawing, possibly the version in the Louvre, was left in the possession of Isabella's husband, Francesco de Gonzaga, who, as Isabella complained in a letter, gave it away.[5] Whether or not Leonardo executed a second version is unclear, but at least four copies of the drawing exist, none of which is attributed to Leonardo himself.[6] One of these, the version in the Ashmolean Museum **(FIG. 3)**, was pounced from the Louvre cartoon and shows Isabella with her arm resting on a parapet and pointing to a book, details that were cropped out of the Louvre drawing at an unknown date. The fact that the book and parapet are also absent from the recently announced painting, indicates that it was based on the Louvre cartoon sometime *after* it was cut down. As Martin Kemp has observed, one consequence of the loss of the book is that it renders Isabella's pointing gesture in the painting illogical. The artist may have tried to account for Isabella's enigmatic hand gesture by inserting a palm frond in her hand and a wheel at the bottom of the painting, together with the tiara, thereby transforming a secular portrait of a noble lady into a St. Catherine of Alexandria.

So far, connoisseurship does not seem to be a central factor in discussions of the recently discovered painting, as surprisingly few Leonardo experts have publicly ventured their opinions on the painting's style. Perhaps they are waiting for more information about the provenance and the results of the paint analysis before passing judgment. Or perhaps they agree with Kemp, one of the few scholars to come out publicly against the attribution, who argues in his blog posting that the painting is so implausible that "connoisseurship is not needed in this case." At least one other scholar has also chosen to weigh in. In an interview with the Italian newspaper *Il giorno*,[7] Italian art scholar and critic Vittorio Sgarbi denounced the new-

FIGURE 3. ***Portrait of Isabella d'Este,*** **sketch. Copy after Leonardo da Vinci. Black chalk on paper, 24 49/64 x 18 inches (62.9 x 48.4 cm). (Ashmolean Museum, Oxford.)**

[4] D.S. Chambers "Isabella d'Este and the Travel Diary of Antonio de Beatis," *Journal of the Warburg and Courtauld Institutes,* Vol. 64 (2001), pp. 296-308. The painting at Blois is generally assumed to have been Leonardo's *La Belle Ferronière,* which depicts one of the mistresses of Ludovico Sforza, Duke of Milan.

[5] Frank Zöllner, *Leonardo (1452-1519), the Complete Paintings and Drawings,* (London: Taschen, 2003), p. 216.

[6] They are located in the Ashmolean Museum, the Uffizi Gallery, the British Museum, and the Staatliche Graphische Sammlung in Munich.

[7] Enrico Gatta, "Le due dame di Leonardo Ma Isabella d'Este divide," *Il giorno* (Oct. 6, 2013).

> "Kemp … argues in his blog posting that the painting is so implausible that 'connoisseurship is not needed in this case'."

found masterpiece as worthless, having "no volume, no chiaroscuro," more like something one would find in the Porta Portese flea market in Rome.

As we have learned from past experience with legions of purported new "Leonardos," a consensus of scholarly opinion is required for a work to be accepted. That has not yet happened in this case, despite Pedretti's strong pronouncements. Whether the rediscovered portrait of Isabella d'Este will eventually earn a place in the canon of Leonardo, or will fade into obscurity along with so many before it, depends on what new documentary and other evidence is brought to light and the consensus of expert opinion as to its style.

LISA DUFFY-ZEBALLOS
ART RESEARCH DIRECTOR
and **SHARON FLESCHER**

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BREAKING NEWS

STILL ANOTHER LEONARDO?

As *IFAR Journal* goes to press, we learn of another, potentially more exciting Leonardo rediscovery — a series of underdrawings on the walls of the Sala delle Asse (Room of the Panels) in the Castello Sforzesco in Milan **(FIG. 1)**. It is known that Leonardo and his assistants decorated the vault of the room in 1498 while he was working as court artist for Ludovico Sforza, Duke of Milan. The decoration incorporates a leafy canopy of mulberry tree branches (whose Latin name, *morus,* was commonly used to refer to Ludovico, *Il Moro).* Whitewashed over in the early 18th century, the ceiling decoration was restored in 1901. Some drawings were discovered on the lower portion of the lateral walls in the 1950s, but these are not generally believed to be by Leonardo. The recently discovered drawings, also on the lower part of the walls, were found as part of a restoration campaign carried out by a Florentine conservation team for the city of Milan. The newly uncovered drawings, said to be by Leonardo, show tree roots breaking through stone walls.

FIGURE 1. ***The Sala della Asse*** **with the rediscovered drawing on the back wall in the center.**

NEW SITES ON UNESCO'S WORLD HERITAGE LIST

FIGURE 1. Golestan Palace, Tehran, Iran.

At its 37th annual meeting in Cambodia in June, the UNESCO World Heritage Committee added nineteen cultural and natural sites to the World Heritage List (FIG. 1). To be inscribed on the List, a site must have "outstanding universal value" and also be either a masterpiece of human creativity, an example of a traditional human settlement, or meet one of eight other criteria.

The Committee also added six World Heritage sites in the Syrian Arab Republic to its List of World Heritage in Danger. Including the nineteen newly added sites, the World Heritage List now comprises 981 natural and cultural sites in 160 nations.

THE 2013 ADDITIONS:

Natural Sites

- Xinjiang Tianshan, China
- Mount Etna, Sicily, Italy
- El Pinacate and Gran Desierto de Altar Biosphere Reserve, Mexico
- Namib Sand Sea, Namibia
- Tajik National Park, Tajikstan

Cultural Sites

- Red Bay Basque Whaling Station, Newfoundland, Canada
- Cultural Landscape of Honghe Hani Rice Terraces, China
- Levuka Historical Port Town, Fiji
- Bergpark Wilhelmshohe, Kassel, Germany
- Hill Forts of Rajashtan, India
- Golestan Palace, Tehran, Iran
- Medici Villas and Gardens in Tuscany, Italy
- Fujisan (Mt. Fuji), sacred place and source of artistic inspiration, Japan
- Historic Centre of Agadez, Niger
- Historic Monuments and Sites in Kaesong, North Korea
- Wooden Tserkvas of the Carpathian Region in Poland and Ukraine
- University of Coimbra, Alta and Sofia, Portugal
- Al Zubarah Archaeological Site, Qatar
- Ancient City of Tauric Chersonese and its Chora, Ukraine

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SYRIAN RED LIST PUBLISHED

The ongoing conflict in Syria has taken its toll on cultural objects as well as people. On September 25, the International Council of Museums (ICOM) unveiled its *Emergency Red List of Syrian Cultural Objects at Risk* in a ceremony at the Metropolitan Museum amidst remarks by UNESCO Director-General, Irina Bokova, Met Director, Thomas Campbell, and World Monuments Fund President (and former IFAR Executive Director), Bonnie Burnham. The List identifies categories of Syrian cultural goods most vulnerable to illicit trafficking. It includes written objects, sculpture, vessels, architectural elements, stamps, and coins from Prehistoric to Ottoman times.

Created in collaboration with the U.S. Department of State and UNESCO with input from officials from Syria's Department of Antiquities, the new List joins similar Red Lists for at risk regions, such as Africa, Iraq, Latin America, China, Afghanistan, Peru, and Cambodia, and can be found on ICOM's website.

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IN MEMORIAM

PHILIP C. JESSUP, Jr.

August 30, 1926 – August 28, 2013

ATTORNEY, ADVISOR, FRIEND

Secretary and General Counsel, National Gallery of Art, Washington, D.C., 1984-2000

MEMBER
IFAR LAW ADVISORY COUNCIL,
1986 – 2003

THE LONG ARMS OF A TEXTBOOK CASE

KIRTSAENG BOOK DECISION APPLAUDED BY MUSEUMS

In its spring 2013 term, the United States Supreme Court handed down a major copyright decision ostensibly concerning the sale of books that also has far reaching implications for the art world. And while it may not initially be clear what international textbook arbitrage has to do with Picasso, the Association of Art Museum Directors (AAMD) and several prominent museums jointly filed an amicus — friend of the court — brief to the Supreme Court making the ramifications of the Court's decision clear, particularly its potential to disrupt the ability of art museums to display modern and contemporary art created outside the U.S. The Supreme Court's ruling, overturning the appellate court and favorable to museums, specifically cited the AAMD's arguments. But its impact may be short-lived.

The case, *Kirtsaeng v. Wiley & Sons, Inc.*,[1] arose from one enterprising student's re-sale of textbooks manufactured and sold overseas. The student (Cornell and then the University of Southern California), Supap Kirtsaeng, had friends and family purchase textbooks in Thailand, where editions of the books are printed and sold at lower prices than those in the U.S., and ship them to the U.S. where he re-sold them online, using the profits to help defray his tuition costs. Kirtsaeng's online business recorded approximately $37,000 in sales of textbooks published by John Wiley & Sons. Wiley, not surprisingly, sued Kirtsaeng for copyright infringement.

At issue was the general question of the legality of "gray market goods"— goods purchased at lower prices overseas and then imported and re-sold in the United States. Publishers and other manufacturers frequently make goods available at different prices in different markets, consequently ending up competing with themselves when the goods

1 *Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S. Ct. 1351 (U.S. 2013).

are imported back into the U.S. Like other publishers, Wiley & Sons included language in its textbooks stating that the overseas copies were only to be sold outside the U.S., but, despite the warning, the law about such "gray market goods" remained unsettled until the Supreme Court's recent ruling.

The case hinged on the interpretation of the "first sale" doctrine of the U.S. Copyright Act[2] as a possible exception to copyright infringement. The "first sale" doctrine states, in sum and substance, that a copyright holder can control the initial distribution of a copyrighted work but that the buyer of that work and subsequent owners may dispose of it however they choose. This doctrine, which originated in common law, is a codified limitation on a copyright holder's right to distribute copyrighted works. The Act limits the "first sale" doctrine to copies "lawfully made under this title," but does not define the doctrine any further, leaving it up to the judiciary to interpret and apply it.

Wiley & Sons argued that "lawfully made under this title" meant "made in the USA where the Copyright Act applies," whereas Kirtsaeng argued that it meant made in accordance with the Copyright Act – regardless of geographic location. The New York Southern District Court and Second Circuit Court of Appeals both sided with Wiley & Sons – holding that the "first-sale" doctrine *never* applies to goods manufactured overseas.

"Why, one might ask, did this issue spur the AAMD and nine prominent museums (including the Guggenheim, the Museum of Modern Art, the Whitney, and the Getty) to jointly submit an amicus brief to the Supreme Court?"

Two similar cases had previously been heard by the Ninth and Third Circuit Courts of Appeals, but reached different outcomes, thereby creating a "circuit split" ripe for Supreme Court review. The Third Circuit decision[3] said that foreign-made goods could *always* be re-sold in the U.S. as long as the copyright holder authorized an initial sale overseas. The Ninth Circuit determined that foreign-made goods could *sometimes* be sold in the U.S., but only after the copyright holder has approved a previous sale in the U.S.[4] In 2010, the Supreme Court heard an appeal in the Ninth Circuit case,[5] but a non-precedential 4-4 decision resulted when Supreme Court Justice Kagan recused herself, leaving the Ninth Circuit's ruling in place. Kirtsaeng's appeal from the Second Circuit's ruling last term gave the Supreme Court another chance to address the issue of how the "first sale" doctrine applies to overseas goods.

Why, one might ask, did this issue spur the AAMD and nine prominent museums (including the Guggenheim, the Museum of Modern Art, the Whitney, and the Getty) to jointly submit an amicus brief to the Supreme Court? In essence, the museum community saw broader implications and argued that the Second Circuit's decision, if upheld, would endanger their ability to display modern and contemporary art made abroad – whether by foreign artists or American artists working abroad. As most modern and contemporary artworks are still in copyright, they feared that

2 *See* 17 U.S.C. 602(a)(1).

3 *Sebastian Int'l, Inc. v. Consumer Contact, Ltd.*, 847 F.2d 1093 (3rd Cir. 1988).

4 *Omega, S.A. v. Costco Wholesale Corp.*, 541 F.3d 982 (9th Cir. 2008).

5 *Costco Wholesale Corp. v. Omega, S.A.*, 131 S. Ct. 565 (U.S. 2010).

limiting the "first sale" doctrine to works made in the U.S. might open museums to infringement claims from copyright holders of foreign-made works for merely displaying the works, forcing museums to seek permission to exhibit, acquire, borrow, lend, and de-accession foreign-made works simply to avoid potential claims. Doing so, the museums said, would not only be time-consuming and costly, in some instances it might be impossible, as they might not be able to locate all copyright holders, resulting in legal limbo and paralysis. In short, the Second Circuit's decision, the museums argued, placed their "curatorial freedom at risk."

With the aid of the litigants' arguments, the AAMD brief, and more than 20 additional amicus briefs (filed by parties as disparate as eBay, Goodwill Industries, the American Library Association, the United States government, and the Association of American Publishers), the Supreme Court held that the "first sale" doctrine is not limited to works made in the U.S. – but rather that it also applies to materials made abroad. Therefore, once a work is lawfully made and sold abroad, the copyright owner cannot control its subsequent sale or importation.

In reaching this conclusion, the Supreme Court acknowledged the concerns raised by the AAMD and museums:

> Art museum directors ask us to consider their efforts to display foreign-produced works by, say, Cy Twombly, Réne Magritte, Henri Matisse, Pablo Picasso, and others. … we believe that the practical problems [they] have described are too serious, too extensive, and too likely to come about for us to dismiss them as insignificant …

SHORT-LIVED VICTORY?

While museums and others who rely on the "first sale" doctrine (such as libraries and resale shops) can breathe a sigh of relief for now, it may not last long. Justice Kagan, concurring in the opinion, wrote separately to suggest that Congress should change the Copyright Act if it does not like the Court's interpretation of the "first sale" doctrine. (Because the Supreme Court's decision interpreted and applied a statute, Congress has the authority to change the statute to achieve a different result.)

Congress seems to have taken her up on that suggestion. On March 20, 2013, one day after the *Kirtsaeng* ruling, the Senate Judiciary Subcommittee on Courts, Intellectual Property and the Internet heard testimony from Maria Pallante, the Register of Copyrights, who called upon Congress to make a wholesale revision to the Copyright Act, which was last overhauled in 1976 – when the 8-track player was state of the art. In April, Rep. Bob Goodlatte, announced that the Judiciary Committee would conduct a comprehensive review of U.S. copyright law. Several hearings have been held since May, including an examination of the roles of copyrights and technology. Additional hearings are expected and are likely to entail discussion of the "first sale" doctrine, which may result in revision to the portion of the Copyright Act at issue in *Kirtsaeng*.

—ANN-MARGRET GIDLEY
IFAR LEGAL ASSOCIATE
and **S. F.**

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KLIMT'S *BEETHOVEN FRIEZE* ENTERS RESTITUTION FRAY AGAIN, AS A 2009 AUSTRIAN AMENDMENT IS PUT TO THE TEST

As the *Journal* goes to press, IFAR has learned that Gustav Klimt's celebrated *Beethoven Frieze* (FIG. 1) is once again the subject of a potentially controversial restitution claim. On October 16, the *New York Times* broke the story that the Geneva-based heirs of Austrian-Jewish industrialist, August Lederer, are filing a claim for the frieze against the Austrian government, currently the legitimate owner.[1] Although the courts denied restitution of the massive – 112 feet wide by 7 feet high – painting to the Lederer family in 1999, the heirs now intend to take advantage of a 2009 amendment to Austria's Art Restitution Act that may enable its return to them.

It is this change to the law that has turned the B*eethoven Frieze* into a test case that may pit Austria's cultural politics against individual restitution claims. As the *Times* points out, the case surrounding the frieze, arguably one of Austria's greatest national treasures, is fraught with contention because it hinges on how "stolen art was handled *after* the war ended" [italics added] rather than on Nazi plunder itself. At issue is the extent to which the Austrian federal government rightfully enacted the Export Prohibition Act with regard to the original post-War restitution claim.

The facts of the case, as outlined below, are fairly straightforward. More complicated is the allegation that the Austrian Government engaged in a form of extortion in its post-War dealings with the Lederer family.

Klimt created his *Beethoven Frieze* in 1902 specifically for the fourteenth exhibition of the Vienna Secession, the avant-garde movement that he helped found five years earlier. The exhibition was dedicated to Beethoven. Klimt's decorative cycle, which encircled the exhibition hall of the Secession building (where after many vicissitudes, the frieze now resides again), was a painted interpretation of the fourth, choral movement of Beethoven's Ninth Symphony. Drawing inspiration from a wide variety of sources, from ancient Greek, Byzantine, and Japanese art to contemporary symbolist and *Jugendstil* art, Klimt created a new stylistic and highly decorative vocabulary. Then as now, the frieze was considered to be one of the artist's most accomplished works.

In 1903, the frieze was removed from the wall, cut into seven pieces, and sold to an art collector, who, in 1915, sold it to August Lederer, one of Klimt's most devoted and important patrons. Lederer kept the work in storage. In 1936, Lederer died in Vienna, and in 1938, the frieze was seized

FIGURE 1. GUSTAV KLIMT, *Beethoven Frieze,* **1902. Detail showing "The Hostile Powers." Oesterreichische Galerie im Belvedere, Vienna, Austria. Photo credit: Erich Lessing / Art Resource, NY.**

[1] Patricia Cohen, "Heirs Press Austria to Return Looted Klimt Frieze," *New York Times,* October 16, 2013, C3.

by the Nazis along with several other Klimts in the Lederer collection, of which at least 18 were destroyed. In 1945, although the Austrian government agreed that August's son, Erich, who had survived both his parents and was living in Geneva, was the rightful owner of the work, they prohibited its export. The frieze was deposited in the basement of the Galerie Belvedere in Vienna, where it remained until 1973.

Conflicts arose between the Austrian authorities and Erich Lederer regarding the restoration and presentation of the frieze in the intervening years. In 1973, Lederer sold the work, then in poor condition and in need of major restoration, to the Austrian government for 15 million Austrian schillings, considerably less than its then appraised valuation by Christies of 25 million schillings. The Belvedere then undertook an extensive and costly ten-year restoration of the frieze and, in 1986, and installed the entire decorative cycle in a specially designed room on the lower level of the Vienna Secession Building, where it currently resides in a climate controlled environment on permanent view.

According to the Austrian newspaper, *Wiener Kurier,* the Lederer heirs assert that the 1973 sale occurred under pressure from the Austrian government as a means to retrieve other works in their collection. Quoting from Sophie Lillie's book on the Nazi seizure of art collections in Austria, the paper writes that the government used its power to deny the export of the frieze in order to extort further donations of cultural property from Erich Lederer.[2] As the Lederer claim moves forward, presumably more facts will emerge to substantiate this assertion.

The Lederer family made their first restitution claim for the work in 1999 following the 1998 Austrian Art Restitution Act. Their petition was denied on the grounds that the family had knowingly agreed to the 1973 sale. Per the *Wiener Kurier,* proof that the sale was agreed upon was demonstrated by Elizabeth Lederer's 1985 donation to the Belvedere of fourteen of Klimt's studies for the *Beethoven Frieze.*[3] The heirs are basing their current claim on a 2009 amendment to the 1998 law. The amendment allows for "the restitution of confiscated objects, which were obtained by the Austrian federal government for a fee as a result of the coercion resulting from export prohibitions (Export Prohibition Act) ..." (Sec.1 (2).[4] It is not clear what, if any, effect another 2009 amendment limiting the duration of validity for exceptions from the Export Prohibition Act to 25 years from transfer of ownership, may have on their claim.

It remains to be seen how the Austrian government's Art Restitution Advisory Board, to which the claim was filed, will react to this latest claim from a family the government ruled against once before. The ultimate decision will rest in the hands of Austria's Minister for Education, the Arts and Culture. The frieze has been in the public domain for many years and was restored and put on display at great cost to the government beyond its initial 15 million shilling purchase price. National treasures, as we have seen with other restitution claims, are not easy to give up.

MICHELE WIJEGOONARATNA,
IFAR ART RESEARCH ASSOCIATE
and **S.F.**

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2 Article published on October 16, 2013 by George Leyrer in *Wiener Kurier* http://kurier.at/kultur/kunst/erben-kaempfen-um-klimts-beethovenfries/31.214.907
Lillie, Sophie. *Was einmal war: Handbuch der enteigneten Kunstsammlungen Wiens.* Vienna: Czernin, 2003.

3 http://kurier.at/kultur/kunst/erben-kaempfen-um-klimts-beethovenfries/31.214.907

4 Federal Law Gazette I, 117/2009; http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_117/BGBLA_2009_I_117.pdf

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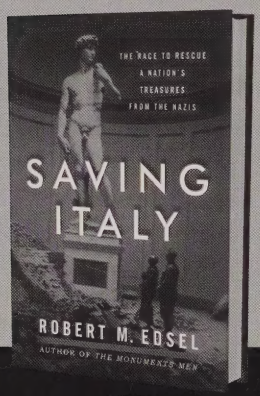

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U.S. SUPREME COURT REFUSES TO REVIEW FAIR USE DECISION FAVORING PRINCE

As IFAR anticipated,[1] Patrick Cariou, the photographer who sued appropriation artist Richard Prince for copyright infringement, asked the Supreme Court to review the Second Circuit's April decision that largely favored Prince, but left the art world with unclear guidance as to when it is fair use for one artist to incorporate another artist's copyrighted work without permission.

The Supreme Court, however, has rejected Cariou's request, although part of the case remains alive. The District Court, on remand, still has to reconsider five of the thirty artworks initially at issue.

Cariou filed the infringement claim against Prince, Prince's dealer, Larry Gagosian, and the Gagosian Gallery in 2011 after learning that Prince had incorporated several photographs from his book, *Yes Rasta,* into a mixed-media series, *Canal Zone.* Cariou's book contained photographs taken over a roughly six-year period in rural Jamaica where he lived with Rastafarians, a minority insular religious group. Cariou's book was not a best seller; only 5,791 copies were sold as of January 2010; two of those copies were purchased by Prince.

In his *Canal Zone* series, Prince incorporated parts or sometimes all of Cariou's photos without permission or even acknowledging Cariou. He cropped, colored, and enlarged Cariou's images into 30 of his own collages that were displayed at the Gagosian Gallery in New York. Eight sold for a total of more than $10 million. Seven additional works were traded for art valued between six and eight million dollars. At the same time, Cariou's photographs were abruptly dropped by a gallery from a planned show so as not to be "redundant" with Prince's work. Cariou's photos were expected to be offered at $3,000 to $20,000.

The lawsuit, with its David versus Goliath overtones, has captured art world attention. At issue: whether Prince's use of Cariou's work constituted a "fair," and therefore a non-infringing, use. "Fair use," codified in Section 107 of the Copyright Act, exempts certain uses of copyrighted material, such as for commentary and criticism, from infringement.

Just as significantly, the case goes to the heart of appropriation art itself, which, by taking artwork of others to create new works, exists in tension with the rights of copyright holders, often photographers. In 2011, the federal district court in New York ruled for Cariou,[2] saying Prince's use wasn't fair and could only be fair to the extent that it commented on Cariou's underlying work. Prince's own testimony indicated that he hadn't intended to comment upon *any* aspects of Cariou's work. Prince and Gagosian appealed to the Second Circuit Court of Appeals.

"The case goes to the heart of appropriation art itself, which, by taking artwork of others to create new works, exists in tension with the rights of copyright holders, often photographers."

This April (2013), the Second Circuit criticized and largely reversed the lower court's decision,[3] saying that "the law does not require that a secondary use comment on the original artist

1 See Ann-Margret Gidley and Sharon Flescher, "Appeals Court Says Prince Made 'Fair Use' of (Most of) Cariou's Copyrighted Photos: Cariou Plans to Ask Supreme Court to Review," *IFAR Journal,* Vol. 14, nos. 1 and 2 (2013), pp. 5-8.

2 *Cariou v. Prince,* No. 08 civ., 11327 (S.D.N.Y. Mar, 18, 2011).

3 *Cariou v. Prince,* No. 11-1197-cv slip op. (2d Cir. Apr. 25, 2013).

or work ..." It then went on to hold that twenty-five of Prince's allegedly infringing works were "transformative," and therefore a fair use of Cariou's photographs, and remanded the remaining five of the original thirty works to the District Court to evaluate under the corrected standard.

"On November 12, as *IFAR Journal* was at press, the Supreme Court rejected Cariou's petition."

The Second Circuit's decision was criticized for its lack of clarity or guidance to artists, would-be infringers, and the lower courts, as well as for the Court's use of its *own* artistic judgment, and its "we know infringement when we see it" approach. Moreover, it seemed to leave open questions about how non-infringing transformative works are to be distinguished from derivative works. The latter may only be lawfully authorized by a copyright holder.

Nonetheless, the story has now effectively played out. In his August petition for Supreme Court review, Cariou asserted that the Second Circuit relied on "inapposite snippets" of Supreme Court precedent to re-write fair use analysis, and asked the Court to address:

(1) whether a fair use evaluation requires consideration of an alleged infringer's purpose rather than solely observation of a work's expressive character as perceived by judges;

(2) whether substantial appropriation may be used only in parody where it is necessary to "conjure up" enough of the original to make the parody clear; and

(3) whether, and if so how, potential markets that have not been aggressively exploited should be considered in a fair use evaluation.

On November 12, as *IFAR Journal* was at press, the Supreme Court rejected Cariou's petition. This is not surprising as the Court hears only about one percent of requests and never explains the reasons for its choices. Important factors influencing choices include whether the legal question has been decided differently by two circuit courts, whether a lower-court decision conflicts with an existing Supreme Court ruling, and whether the issue could have significance beyond the two parties in the case.

Cariou wasn't the only one hoping the justices would select the case. Fair use is a notoriously fact-intensive and unpredictable doctrine and the Court's leading case, addressing rap group 2 Live Crew's parody of Roy Orbison's *Pretty Woman*, was decided nearly 20 years ago (in 2 Live Crew's favor).[4] The New York Intellectual Property Law Association, for example, had submitted an amicus brief arguing that the Second Circuit was incorrect and urging the Court to hear the case. Many other legal practitioners and artists would have welcomed more Supreme Court guidance on the contours and application of fair use as an exception to copyright infringement. They will all have to wait for that to happen.

—**A. M. G.** and **S. F.**

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4 *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994).

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FINGERPRINT SPECIALIST'S DEFAMATION SUIT AGAINST *THE NEW YORKER* FAILS; APPEAL EXPECTED

On August 1, Judge Paul Oetken of the Southern District of New York rejected Canadian conservator Peter Paul Biro's claims that *The New Yorker* defamed him in its July 2010 article, "*Mark of a Masterpiece: The man who keeps finding famous fingerprints on uncelebrated works of art.*"[1] As IFAR previously reported,[2] the article, written by David Grann (also a defendant in the suit) profiled Biro and the controversial fingerprint analysis he has used to attribute previously unknown works to famous artists, such as Turner, Pollock, and Leonardo da Vinci. The case isn't over, however; Biro's attorney told IFAR that his client intends to appeal.

Biro filed the lawsuit in 2011, alleging that Grann's article harmed his reputation by calling into question his integrity, his findings, and, by implication, his research as a whole. Specifically, Grann reported on Canadian legal disputes in which Biro was accused of wrongdoing; his alleged shady business dealings; and accusations of forgery. Describing the article as "a largely false and defamatory screed against" him, Biro's complaint identified more than two dozen specific passages that he said were "written and published with malice and an indifference to the standards of responsible journalism." Biro sought more than $10 million in compensatory and punitive damages. Also named in the suit were several other publishers, including Gawker Media and Yale University Press, who discussed or cited Grann's article.

Last year, Judge Oetken dismissed most of Biro's claims against Grann and *The New Yorker,* but allowed four to survive as potentially defamatory: (1) Grann's quoting of Montreal businesswoman Elizabeth Lipsz, who was involved in one of the Canadian suits and called Biro a "classic con man"; (2) the article's implication that Biro had forged fingerprints; (3) Grann's discussion of Biro's involvement in a questionable business venture; and (4) Grann's reporting on another Canadian legal dispute, to the extent that it was not protected by the fair reporting privilege.

"The case isn't over, however; Biro's attorney told IFAR that his client intends to appeal."

All four surviving claims, as well as some of Biro's claims against other publishers, were dismissed in the court's most recent ruling. In so doing, the court first concluded that Biro is a "limited purpose public figure" – a legal determination that meant that he would have to prove his defamation claims beyond the typical negligence standard and instead demonstrate "actual malice." Although Biro attempted to downplay his role as a public figure, the court found that his contributions to scientific journals, lecturing at universities, and opining on authentication issues in news shows and documentaries provided sufficient evidence to the contrary, as did his prominent role in the public controversy surrounding the value of forensic art authentication, and his access to media channels beyond that available to the average person.

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1 *Biro v. Condé Nast,* No. 11 Civ. 4442 (JPO) (S.D.N.Y. Aug. 9, 2012); David Grann, "Mark of a Masterpiece: The man who keeps finding famous fingerprints on uncelebrated works of art," *The New Yorker,* July 12-19, 2010.

2 *See* Mary Morabito Rosewater and Sharon Flescher, "Myth of Fingerprints? Some of Forensic Scientist's Defamation Claims Against *The New Yorker* Survive Dismissal," *IFAR Journal,* Vol. 13, no. 4 (2012), pp. 9-12.

"As to Biro's specific claims, Judge Oetken found the allegations bereft of any factual support."

After concluding that Biro was a public figure, the court then evaluated Biro's four remaining defamation claims against *The New Yorker* using the "actual malice" standard, a term denoting deliberate or reckless falsification. It requires evidence that an author entertained serious doubts as to the truth of a published statement, but it is a notoriously difficult standard to meet, and as Judge Oetken noted, negligently failing to verify an article falls short of the standard. The operative question, the judge said, "is whether [Grann] failed to investigate in the face of actual, subjective doubts as to the accuracy of the story." As to Biro's specific claims, Judge Oetken found the allegations bereft of any factual support. On the contrary, he said, the article itself suggested that it was *implausible* that *The New Yorker* and Grann acted with actual malice. In fact, Grann's article didn't express accusations but rather raised questions, and permitted Biro to respond to allegations and readers to make up their own minds. This fell short of the actual malice needed for Biro's claims to proceed.

Biro's claims against other defendants were also dismissed, largely for lack of factual basis. Claims against two remaining defendants, who have not yet filed motions to dismiss, remain. According to his attorney, Richard Altman, Biro plans to appeal the decision to the Second Circuit because Judge Oetken "suggested that the application of the law... was possibly unfair" to him.

—**A.M.G.** and **S.F.**

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ROUND TWO: *U.S. GOVERNMENT V. SOTHEBY'S*
MEANWHILE U.S. MOU WITH CAMBODIA RENEWED

Sotheby's and the U.S. Government have squared off once again in the battle over a $3 million 10th century Cambodian sculpture. Sotheby's pulled the first punch this round, filing a Motion for Judgment on the Pleadings on September 9 which, if granted, would be a total knockout to the Government's forfeiture case accusing the auction house of violating the National Stolen Property Act. In the motion, Sotheby's accuses the Government of flouting the law, "inventing" legal theories, and interfering with a potentially amicable settlement. The Government hasn't backed down, however, and, instead, has hit back hard, accusing Sotheby's of providing "false and misleading information…to prevent the Government from obtaining the true facts regarding the [statue's] theft." Ouch.

The case, which IFAR has been closely following,[1] arose from a Belgian collector's consignment of a Khmer sandstone warrior to Sotheby's in 2010 and the Government's seizure of it, ostensibly on Cambodia's behalf. In its April 4, 2012 forfeiture complaint,[2] the Government alleged that the statue had been looted from a Cambodian temple in Koh Ker, capital of the Khmer empire from AD 928 to 944. This assertion is based in part on the research of an archaeologist at the French School for Far Eastern Studies, who examined the still extant feet of a pedestal in situ in the western pavilion of the temple and compared them to the breakage profiles of the statue offered for sale, concluding that the two were once joined. Relying upon French Colonial decrees from 1900 and 1925, the Government asserted that the statue was Cambodian national property when it was removed and that it was, therefore, stolen.

On the day the Hindu sculpture was slated for sale, March 24, 2011, the Secretary General of the Cambodia National Commission for UNESCO requested that Sotheby's pull the sculpture from the sale "to facilitate its return to the Kingdom of Cambodia." When negotiations between Sotheby's and Cambodia failed, the U.S. government intervened with its forfeiture action. Sotheby's attempted to have the case dismissed last June, but the Court denied the request.

> "The Government accuses Sotheby's of provid[ing] 'false and misleading information' in an effort to prevent it from obtaining the true facts regarding the theft of the statue."

Sotheby's' recent filing calls into question whether the Government was truly acting on Cambodia's behalf, or instead out of self-interest when it intervened. Noting that Cambodia had been repeatedly asked to identify a legal basis for its ownership during the Government's investigation but had failed to do so, Sotheby's now accuses the Government of seizing the statue *without* having probable cause to believe that it was stolen – despite claiming that it did and a legal requirement that probable cause exist. Specifically, Sotheby's claims that communications one day prior to

1 *See* Ann-Margret Gidley and Sharon Flescher, "Cambodia's Repatriation Campaign: Developments in the Case Against Sotheby's," *IFAR Journal*, Vol. 13, no. 4 (2012/13); and "Met Returns Khmer Sculptures to Cambodia; Case Against Sotheby's Allowed to Move Forward," *IFAR Journal*, Vol. 14, nos. 1-2 (2013).

2 *See United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located at Sotheby's in New York, New York*, No. 12-cv-2600-GBD (S.D.N.Y. filed Apr. 4, 2012).

the sculpture's seizure show that the Government believed that there was no legal basis for Cambodia's claim and, moreover, that Government communications post-dating the seizure show the Government attempting to hobble together a legal theory to justify its earlier actions.

Sotheby's also attacks the legal underpinnings of the Government's case. Submitting an affidavit from an expert in French Colonial property law, Sotheby's asserts that no law applicable to Cambodia in the French Colonial period declared Cambodia owner of the statue – a fundamental element of the Government's case. Although the Government has argued otherwise, the expert flatly says that the Government's interpretation of French Colonial law is wrong. Sotheby's also charges that the State Department "invented" one of the legal theories that the Government relies upon only after the statue was seized, and that Sotheby's, and its consignor, could not have possibly known of it, therefore raising due process issues.

Asking the court to stay discovery, Sotheby's says the Government has sought unduly broad and burdensome discovery – including requests for documents dating back to 1744 — in an effort to make the cost of litigation exceed the value of the statue. The purpose, according to Sotheby's, is to try to force it to give up without testing the Government's legal arguments.

In a final blow, Sotheby's accuses the Government of foiling what could have been an amicable settlement after Cambodia and Sotheby's spent one year negotiating. Reacting to news of the possibility of a private citizen purchasing the sculpture and repatriating it to Cambodia, Special Agent Brent Easter of Homeland Security Investigations is quoted:

> "...they can come to whatever agreement they want, but at the end of the day, the piece cannot leave Sotheby's without us. ... Everyone supports an amicable surrender of the piece, but prior to the Cambodians getting their hands on it, we [the Government] should be the vehicle utilized for the return. Not an Auction house."

Then, according to Sotheby's, Easter expressed this sentiment to Cambodian officials, directing them, "Please stop negotiating with Sotheby's ..."

For its part, the Government retorts that Sotheby's' interpretation of the early stages of its investigation are "simply inaccurate" and demonstrate the need for further discovery. Noting that Sotheby's has relied on documents outside the operative pleading, the Government has asked the Court to convert Sotheby's' pending motion into one for summary judgment, and to delay a ruling until after discovery closes. Moreover, the Government says, even if Sotheby's' legal analysis is correct, it does not dispose of *all* of their theories that the statue was stolen, but rather just one of three. According to the Government, Sotheby's' French Colonial expert even lends *support* to one theory that the statue was stolen.

As to Sotheby's' request to stay discovery, the Government asserts that it should be denied because Sotheby's provided "false and misleading information" in an effort to prevent it from obtaining the true facts regarding the theft of the statue. Elaborating, the Government explains that Jane Levine, Sotheby's' Worldwide Director of Compliance and a former federal prosecutor who specialized in cultural property crimes, assured it that Sotheby's had solid provenance for the piece. Specifically, Levine said that "two individuals who presently have no financial interest in the property ... personally saw the piece in London in the late 1960s." But, according to the Government, "The information provided by Levine was simply false." Stating without explaining, the Government asserts that

"Sotheby's' recent filing calls into question whether the Government was truly acting on Cambodia's behalf, or instead out of self-interest when it intervened. … [It] accuses the Government of foiling what could have been an amicable settlement after Cambodia and Sotheby's spent one year negotiating."

records ultimately obtained from Sotheby's contradict Levine's claim and instead show that the statue was stolen from the temple in 1972 – several years after its supposed appearance in London. Moreover, it asserts that the two "disinterested" parties who supposedly saw the statue in the 1960's were in fact the collector, Douglas Latchford, who is implicated in its initial acquisition, and his colleague, Emma Bunker, who also happens to be an expert retained by Sotheby's.

Denying the accusations, Sotheby's states that the information Levine provided to the Government accurately reflected what it believed at the time and that it cannot be blamed if Bunker was mistaken about when she first saw the statue in London. Besides, it says, none of this really matters because Cambodia's relevant cultural property law wasn't enacted until 1993 – more than two decades after the Government says the sculpture was removed from Cambodia.

As *IFAR Journal* goes to press, the Government is expected to file a more detailed response in late fall.

MOU WITH CAMBODIA RENEWED

Unconnected to the Government's attempt to claim the Cambodian statue, the Department of State announced on September 16, 2013 the extension of the Memorandum of Understanding (MOU) between the U.S. and the Kingdom of Cambodia. The MOU restricts the importation into the U.S. of Archaeological material dating from the Bronze Age through The Khmer Era deemed at risk of pillage.

On December 2, 1999, the U.S. imposed its first import restriction on Cambodian art — an emergency restriction on Khmer stone sculpture and architectural elements. On September 19, 2003, the U.S. and Cambodia entered into a five-year bilateral agreement, or MOU, imposing import restrictions on certain types of Khmer archaeological materials in stone, metal, and ceramic. The agreement was extended and expanded for an additional five years in 2008, and now is extended again for another five years. Restricted objects may only enter the United States if accompanied by an export permit issued by Cambodian authorities, or documentation verifying its export from Cambodia prior to the effect of the restrictions; thus, prior to 1999 for Khmer stone sculpture. The renewal was consistent with recommendations made by the Cultural Property Advisory Committee under the U.S. Cultural Property Implementation Act.

—**A.M.G.** and **S.F.**

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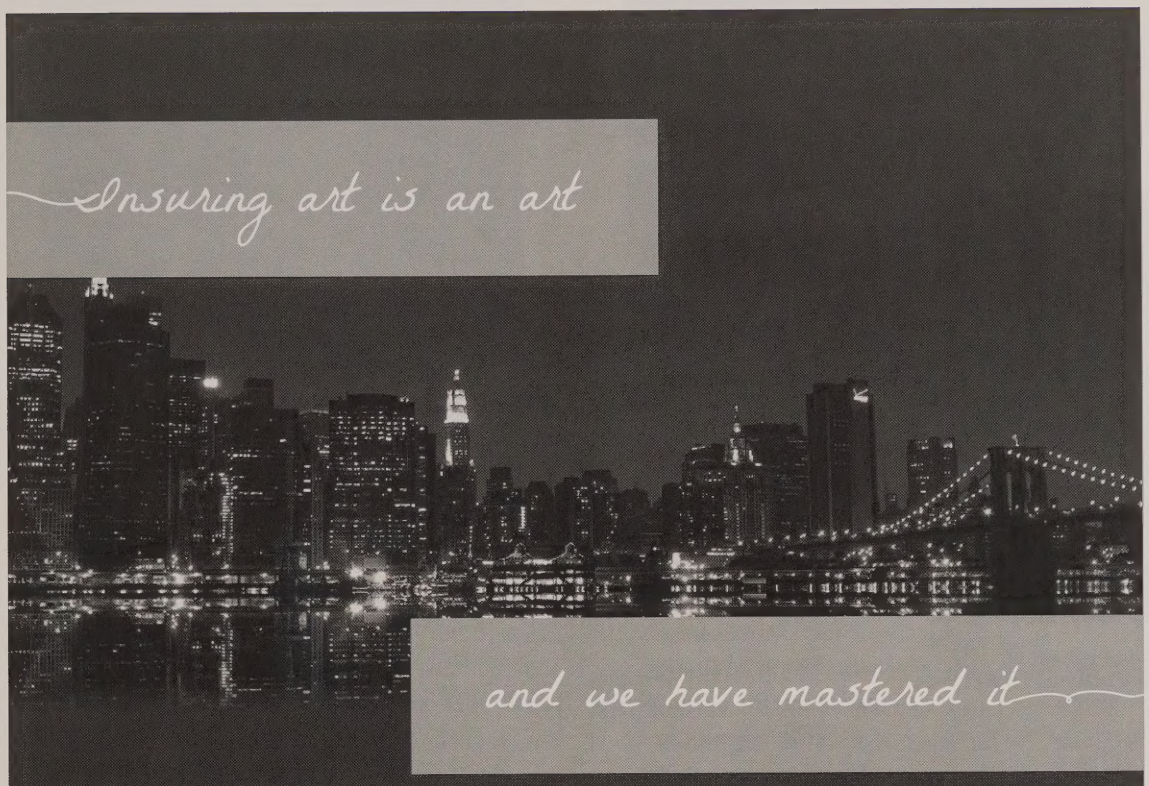

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TWO FRIDA KAHLO PORTRAITS: ONE FOUND, ONE CONFIRMED

SALOMON GRIMBERG, JANE C. H. JACOB, AND LAURENT SOZZANI*

FIGURE 1. Photograph of the *Portrait of Miriam Penansky* taken by Frida Kahlo in 1929.

In August of 1929, after Frida Kahlo painted the *Portrait of Miriam Penansky,* she dutifully had it photographed and, after inscribing on the verso the name "Salomón Hale," filed it in her photographic archive **(FIG. 1)**. Twenty-one years later, on October 8, 1950, Kahlo referred to the portrait during an interview when she spoke of the works she had painted shortly after marrying Diego Rivera in 1929: "I began to make paintings with backgrounds and Mexican things in them; I painted the portraits of [Salomón] Hale's sister [in-law], of Guadalupe Marin and the one of Diego, which I did not finish. These three paintings; who knows where they are?"[1]

The whereabouts of all three paintings remained unknown for another sixty years, but, as will be discussed below, we believe that one — the *Portrait of Miriam Penansky* **(FIG. 2)** — has now been found, and in the process, the authenticity of another previously disputed work, her *Portrait of a Woman in White* **(FIG. 3)**, has been confirmed.

The discovery and documentation of a lost or previously unknown work by a major artist is an extraordinary event; it not only expands the artist's oeuvre, it can provide insight into the artist's life, preoccupations, influences, artistic and social circles, and, of course, how she captured the zeitgeist, or spirit of the time. Equally important, it informs our understanding of her creative process and may also shed light on other works whose attribution until then may have been considered problematic, as in the case under discussion. Needless to say, it can also have an effect on the artist's market; for documentation can make or break a sale, and the commercial value of a well-documented work will be increased to an astonishing degree.

In the case of Mexican artist Frida Kahlo (1907-1954), whose rediscovery as a painter goes back only some thirty years to Hayden Herrera's 1983

*Salomon Grimberg, M.D. is a child psychiatrist in private practice in Dallas, Texas. He writes on various aspects of the creative process and has authored several monographs on Frida Kahlo. He is co-author of *Frida Kahlo, das Gesamtwerk* (1988), the catalogue raisonné of Kahlo's complete works. He is currently working on the authorized catalogue raisonné of the paintings of Leonora Carrington.

*Jane C. H. Jacob, M.S. is an art historian and President of Jacob Fine Art, Inc. in Chicago, a consulting firm specializing in provenance research and issues of attribution. She serves on the board of directors of several organizations, including The Appraisal Foundation in Washington. She is on the adjunct faculty of New York University SCPS. Jacob Fine Art has been working with the current owners of the *Portrait of Miriam Penansky* discussed in this article to verify its provenance and coordinate its conservation and display.

*Laurent Sozzani, M.S., is a conservator of Old Master, modern and contemporary paintings in private practice in Amsterdam. From 1990-2012, he was a full-time paintings restorer at the Rijksmuseum, Amsterdam.

The authors owe a debt of gratitude to Roberto ("Beto") Eduardo Hale; Mariana Amor, Director of the Galería de Arte Mexicano; Mary-Anne Martin, Director of Mary-Anne Martin/Fine Art; and Dr. Helga Prignitz-Poda for their invaluable help in writing this article.

[1] During 1949–50, psychologist Olga Campos interviewed Kahlo for a book she was preparing on the creative process, which was never published. A part of the interview, first published in 2008, consisted of Kahlo telling the story of how she became a painter. This quote is from that interview. See Salomon Grimberg, *Frida Kahlo Song of Herself* (London: Merrell Publishers Limited, 2008), p. 75. The *Portrait of Lupe Marin,* 1929 was always in Marin's collection but, according to her grandson Pedro Diego Alvarado, "She cut it up with scissors" after a quarrel with Kahlo. Personal communication with Salomon Grimberg.

FIGURE 2. FRIDA KAHLO. ***Portrait of Miriam Penansky,*** 1929. Oil on canvas, 60 x 47 cm (24 x 18 inches), shown after cleaning and restoration. Private Collection.

FIGURE 3. FRIDA KAHLO. ***Woman in White,*** 1929. Oil on canvas, 119 x 81 cm (47 x 32 inches). Private Collection, Berlin. © 2013 Banco de México Diego Rivera Frida Kahlo Museums Trust, Mexico, D.F. / Artists Rights Society (ARS), New York.

biography, this is particularly significant.[2] The uncovering of her life and art has brought with it a hunger for her work that is difficult to explain. As the demand to satiate this hunger increases, so does the production of fakes — seemingly by the day.

The Frida Kahlo Museum in Baden-Baden was created just to house a permanent collection of replicas of her paintings, while a factory in Vietnam produces an oil painting copy of any work by Kahlo for a mere thirty dollars. As this phenomenon grows, it has become natural for dealers in Latin American art and auction house specialists to assume that, at any moment, a new Frida fake will come through the door, brought in by someone who unquestioningly believes it to be an original. These works are often accompanied by a "certificate of authenticity" provided by persons and/or institutions with no real knowledge of the artist, making things more difficult for the art world and scholarship. Yet, increasingly, people are eager to trust these documents. Even educated essays on the controversial subject, such as Jason Edward Kaufman's "Finding Frida Kahlo: Controversy Calls into Question the Authenticity of the Renowned Artist's Work" in the *IFAR Journal,* have done little to open the eyes of those who cling to the belief that what is in front of them is the genuine item.[3]

FRIDA

Kahlo's status as a cult figure and a phenomenon makes her among the most famous artists of the twentieth century, and possibly the most popular. Her operatic life: from her exotic looks and the accident that nearly killed her in adolescence, to her more than thirty surgeries, her abortions, her narcissistic self-absorption, the many love affairs, and her volatile marriage to philanderer Diego Rivera, whom she dramatically referred to as her "second accident,"[4] make her a magnet for the curious. Added to these, her autobiographical art, which

[2] The publication that broke ground is Hayden Herrera, *Frida: A Biography of Frida Kahlo* (New York: Harper & Row, 1983).

[3] Jason Edward Kaufman, "Finding Frida Kahlo: Controversy Calls into Question the Authenticity of the Renowned Artist's Work," *IFAR Journal,* Vol. 11, nos. 3 & 4 (2010), pp. 18–25.

[4] Kahlo to Gisèle Freund, in Gisèle Freund, "Imágen de Frida Kahlo," *Novedades* (Mexico City), Supplement, "México en la cultura," June 10, 1951, p. 1.

illustrates many of these events and consolidates her iconic image, is mesmerizing. Both art and artist have crossed over from being labeled Mexican to Surrealist to Modernist.

"The uncovering of [Kahlo's] life and art has brought with it a hunger for her work that is difficult to explain. As the demand to satiate this hunger increases, so does the production of fakes — seemingly by the day."

Kahlo is idolized by anyone who has felt abandoned or rejected, by those who struggle with their sense of self, by feminists, by the handicapped, by the neglected and the outsider. That encompasses a lot of people. In Mexico, she is referred to as "the heroine of pain."[5] People who know nothing about art and have no interest in it know her paintings and the details of her life. In 2012 and 2013 alone, discounting countless commercial gallery shows that include personal memorabilia and photographs, museum exhibitions devoted to Kahlo's work were organized at the High Museum of Art in Atlanta, the Art Gallery of Ontario in Toronto, the Arken Museum in Copenhagen, and the Musée de l'Orangerie in Paris. A recent Mexican exhibition, "In Praise of the Body," in Biarritz, was advertised throughout the city with banners sporting a Kahlo self-portrait, while a second Kahlo self-portrait graced the cover of the catalogue. Upcoming is a major retrospective at the Scuderie del Quirinale in Rome, and the Detroit Institute of Arts has plans for a show on the year that Kahlo and Rivera spent in that city. Anything Kahlo might have touched is akin to a sliver from the True Cross. Mexicans refer to this phenomenon as "Fridamania."[6]

Frida Kahlo das Gesamtwerk, the catalogue raisonné of Kahlo's work published in 1988, documents 271 works, of which 146 are paintings. Of the nine paintings that have surfaced since its publication, four had been documented in the publication but were recorded as lost, and five were then unknown.[7] One of the benefits of preparing the catalogue raisonné some thirty years after Kahlo's death was that many persons who had known Kahlo were still living and could provide valuable information on the whereabouts of works; some owned works, and some who had once owned works were able to provide information that led us to the new owners. Others knew names of collectors or ex-collectors. This helped make a relatively comprehensive document, even though there was no known list by Kahlo of the works she had produced. Her personal archive, held at the Frida Kahlo Museum in Mexico City, has yet to be opened to the public.

In 2008, twenty years after the publication of the catalogue raisonné, the interview of October 1950, mentioned above, surfaced. The closest thing to a list by Kahlo, it provided a windfall of new information about lost and unknown works. The *Portrait of Miriam Penansky* was among the five works that were unknown to the authors of the catalogue raisonné (Helga Prignitz-Poda, Salomon Grimberg, Andrea Kettenmann), until July 12, 2012, when, out of the blue, a request was received by one of the authors of the catalogue raisonné[8] to confirm its authenticity. The work had actually surfaced briefly in 2006 when the current owners of the *Portrait* had shown a photograph of the work to a specialist whose name they could not recall, at Sotheby's Latin American Painting Department, New York and were told that the work, without any documentation to support its authenticity, was, in

5 Antonio Rodríguez, "Frida Kahlo: heroína del dolor," *Novedades* (Mexico City), Supplement, "México en la cultura," July 17, 1955, pp. 1, 4.

6 The term was coined in 1991 when the Museo Estudio Diego Rivera opened an exhibition, "Pasión por Frida," which originally was to be called "Fridamania," but Mrs. Dolores Olmedo, President of the Diego Rivera and Frida Kahlo Trust, changed the name, believing it sounded disrespectful. But by then, Blanca Garduño Pulido, the Museum Director, had already titled her text in the catalog "In Search of Fridamania." The word stuck and continues to be used.

7 Helga Prignitz-Poda, Salomon Grimberg, Andrea Kettenmann, *Frida Kahlo das Gesamtwerk* (Frankfurt am Main: Verlag Neue Kritik, 1988). Known and previously documented works considered lost that have surfaced are: *Portrait of a Girl with Necklace,* c.1929. Cat. 15; *Self-Portrait with Bonito,*1941. Cat. 80; *Congress of the People for Peace,*1952. Cat 131; and *Self-Portrait in a Sunflower,* 1954 (Kahlo's last painting) Cat. 144. The unknown paintings that have surfaced are: *Still Life,* 1925 (Kahlo's first painting); *Portrait of Alejandro Gómez Arias,* 1928; *Portrait of Miriam Penansky,* 1929; *Portrait of a Woman in Polka Dotted Dress,* c.1929; and *Self-Portrait* (miniature), 1938; all in private collections.

their opinion, not genuine. The opinion was given by telephone; no paper trail was left behind. At the time, this information was unbeknownst to the authors of the catalogue raisonné.

MIRIAM PENANSKY

Miriam Penansky, born November 22, 1908, in Chicago, was the youngest child of Polish immigrants, Eva Ginzburg and Charles Penansky **(FIG. 4)**. After her father's death in 1920, her mother married Morris Bromberg. Miriam, who never married, died November 26, 1944, at age 36, from cerebral edema, consequence of a brain tumor, in Mexico City, where she is interred in the Jewish Cemetery.[9] Her older sister, Anna (b. September 1904, Chicago, d. c. 1979, Mexico City), married Salomón Hale of Mexico City, and their first child, Rosalee, was born in 1929. That year, Miriam traveled to Mexico, staying in the Hale household.[10] Eventually, she moved there permanently and taught at Mexico's Music Conservatory. At the time of her death, her portrait by Kahlo went to her youngest maternal aunt, Thelma Jacobson Schwartz, who in 1989 bequeathed it to her daughter, Marsha H. Schwartz, of Joliet, IL, from whom the present owners inherited it.

FIGURE 4. Photograph of Miriam Penansky, which helped identify the sitter, provided by Roberto (Beto) Eduardo Hale, her grandnephew.

Salomón Hale was born in Lipno, Poland, in 1897, immigrated to Mexico as a young man, and quickly became an active member and a welcome presence in the Mexican Jewish community.[11] Within the context of this article, he was reputedly the first foreign collector of Modern Mexican Art. Inés Amor, Director of the prestigious Galería de Arte Mexicano, the first modern art gallery in Mexico, remembered Hale in her *Memorias* as an early collector with an uncanny eye for quality:

> It was surprising to me to find in those early times two sympathizing voices. [One was] Engineer Marte R. Gómez, Minister of Agriculture under [President] Cárdenas. … The only other man in 1935 who visited the Gallery to buy was a Polish immigrant who had been living years in Mexico, Salomón Hale, leather importer, with a small office on Uruguay street [who] had an extraordinary endowment to perceive art in its best phases. … He was among the few who acquired foreign art. He owned a magnificent cubist oil by Picasso, a painting by Miró, and graphics by French artists. But the strength of his collection was paintings by Diego, Orozco, Siqueiros, and Tamayo; he also had magnificent things by Zalce, Guerrero Galván, Leopoldo Méndez and others. He came to like Gerzso and Mérida, which shows that he was a man well prepared to understand. … Aside from what I sold him, I knew he

"The *Portrait of Miriam Penansky* was among the five works that were unknown to the authors of the catalogue raisonné (Helga Prignitz-Poda, Salomon Grimberg, Andrea Kettenmann), until July 12, 2012, when, out of the blue, a request was received by one of the authors of the catalogue to confirm its authenticity."

8 Salomon Grimberg.

9 We are deeply indebted to Roberto Eduardo ("Beto") Hale, a musician and composer, the sole grandchild and heir of Salomón Hale and great-nephew of Miriam Penansky, for generously opening his family archives and sharing with us vital family history, including the photograph of his great aunt that confirms the identity of the sitter.

10 That Miriam Penansky had no intention of staying when she initially traveled to Mexico is suggested by the 1930 U.S. Census, which lists her as a stepdaughter and member of the household of Morris Bromberg.

11 Beto Hale: "He brought all his relatives out of Europe (but one sister, whom he was unable to save, who was arrested and murdered by the Nazis), saving them from the Holocaust, resolving their immigration status and getting them established in Mexico. He also helped non-family members. Not only was he dedicated to his business, his family, and to collecting, but also regularly attended conferences that dealt with history, medicine, and politics. He was an active member of the Mexican Jewish community, founder of the B'nai B'rith, México, active supporter of the foundation of the State of Israel and founder of Lion's Club, México. He was often guest at events by Presidents Manuel Avila Camacho and Miguel Alemán Velasco. His son Eduardo [father of Roberto] was a well-known copyright lawyer. Thanks to his membership in the Rotary Club, Mexico, of which he was President, his son Charles was among those responsible for the eradication of polio in Mexico. His daughter Rosalee held a master's degree in Art History."

bought directly from various artists such as María Izquierdo, Tamayo, and others. ...[12]

Kahlo's own recollection of Hale was of his fine-tuned eye when he acquired a painting she had given to her older sister, Matilde. Kahlo recalled: "The portrait of Rosita that Mati [Matilde] sold to an old clothes dealer, Mr. Hale found in the Lagunilla flea market and bought for 8 pesos."[13] When the work was bought by Hale at the flea market, it was unsigned and undated; the original signature and date, 1928, had been removed. A photograph of the signed and dated painting, made shortly after it was painted, is reproduced in *Das Gesamtwerk* on page 90, for comparison, next to the portrait sans signature and date. In 1981, the work for which Hale had paid roughly 64 cents in U.S. currency, sold in New York for $33,000 (with premium).[14]

FIGURE 5. FRIDA KAHLO. ***Portrait of Alejandro Gómez Arias,*** 1928. Oil on panel, 61.5 x 41 cm (24 x 16 inches). Private Collection, Mexico. 2013 Banco de México Diego Rivera Frida Kahlo Museums Trust, Mexico, D.F. / Artists Rights Society (ARS), New York

FIGURE 6. FRIDA KAHLO. ***Self-Portrait,*** 1930. Oil on canvas. 65 x 54 cm (25 ½ x 23 ¼ inches). Private Collection, Boston. 2013 Banco de México Diego Rivera Frida Kahlo Museums Trust, Mexico, D.F. / Artists Rights Society (ARS), New York.

STYLISTIC ANALYSIS

Hale introduced his sister-in-law, Miriam, to Frida Kahlo within one year of Miriam's move to Mexico. Kahlo painted her portrait shortly thereafter. It is worth comparing the *Portrait of Miriam Penansky,* 1929 **(FIG. 2),** with Kahlo's *Portrait of Alejandro Gómez Arias,* 1928[15] **(FIG. 5),** and the *Self-Portrait,* 1930 **(FIG. 6)** — two paintings produced a year earlier and a year later, respectively. Although her talent was already evident, Kahlo had been painting only four years (since 1925) when she painted the Penansky portrait, and she was still learning her craft. It would be another three years (1932) before she reached the characteristic freedom of her mature work, where, in her compositions, she surprises by introducing or juxtaposing unexpected elements to make a statement. In the portraits painted in 1929 and 1930, Kahlo still seemed far from achieving that freedom, although her painting is significantly better and more natural than in the Gómez Arias portrait of 1928. In the latter, in which her boyfriend Alejandro's suit appears to be made of stiff cardboard, and he, too, seems cut out and pasted in rather than integrated into the background, Kahlo is still cautious. She is even relying on characteristic poses Rivera had used many times before: "I painted two or three things, which are around the house, that to me seem very influenced

12 Jorge Alberto Manrique Teresa del Conde, *Una mujer en el arte mexicano, Memorias de Inés Amor* (México: Universidad Autonoma de México, 1987), pp. 236-37 (Translation, S. Grimberg.).

13 Grimberg, *Frida Kahlo Song of Herself,* p. 74.

14 *Sotheby's 19th and 20th Century Paintings - Drawings - Sculpture - Prints,* New York, May 7, 1981, lot 10, listed as *Seated Girl with Duck,* c.1929.

15 This portrait came to light in 1990 following the death of Gómez Arias, through his heirs. Critic Raquel Tibol declared it an unequivocal fake but thanks to the Kahlo interview by Olga Campos, in which she described the painting, its authenticity was confirmed. See Grimberg, *Song of Herself,* p. 73 and 81 (ill.)

FIGURE 7. Detail, ***Portrait of Alejandro Gómez Arias,*** 1928. © 2013 Banco de México Diego Rivera Frida Kahlo Museums Trust, Mexico, D.F. / Artists Rights Society (ARS), New York.

FIGURE 8. Detail, ***Portrait of Miriam Penansky,*** 1929.

FIGURE 9. Detail, ***Self-Portrait,*** 1930. © 2013 Banco de México Diego Rivera Frida Kahlo Museums Trust, Mexico, D.F. / Artists Rights Society (ARS), New York.

by him," she explained.[16] Yet, in all three portraits (1928-30), she carries over "fingerprint" constants, details that would likely escape a forger, such as the careful contrasts between the dark brown pupils and the perfectly white sclera of the eyes, with a precise, thin white line left between the suspended pupil and the lower lid **(FIGS. 7-9).** In all three portraits, the emphatic black eyebrows she uses to frame the eyes, and the jet-black hair that contrasts with the light skinned faces to draw the viewer's immediate attention already speak of her rapidly evolving style.

Although neither of the better-known portraits was available for technical comparison with the new-found portrait of Miriam Penansky, we did have the unfinished *Portrait of a Woman in White* available for comparative study **(FIG. 3).** It is dated c.1929 because of its similarity to Kahlo's *Self-Portrait, Time Flies* of that year **(FIG. 10).**[17] When the catalogue raisonné authors first saw it in the 1980s while preparing the catalogue, the unfinished work belonged to Kahlo's friend, Lola Álvarez Bravo, Mexico's pre-eminent woman photographer, whose son was selling it for her. Although the painting was essentially unknown, it was included in the catalogue because all three catalogue raisonné authors were certain it was right, despite its authenticity having been rejected by Raquel Tibol, a critic who had known Kahlo. In a review of the catalogue raisonné, Tibol wrote, "In the catalogue of the genuine [works], one [fake] slipped through. I am referring to number 19, *Portrait of a Lady in White* ...".[18]

FIGURE 10. FRIDA KAHLO. ***Time Flies,*** 1929. Oil on masonite. 77.5 x 61 cm (30 ½ x 24 inches). Anthony Bryan Collection. © 2013 Banco de México Diego Rivera Frida Kahlo Museums Trust, Mexico, D.F. / Artists Rights Society (ARS), New York.

16 Grimberg, *Song of Herself,* p. 74. There were more than "two or three things," as can be seen in the catalogue raisonné of her work.

17 The *Portrait of a Woman in White*'s close resemblance in composition, execution, and emotional content to *Self-Portrait, Time Flies* suggested both paintings could have been painted during the same period. In both portraits, the sitter is portrayed in a frontal pose, in the center of the canvas, bringing the viewer into direct and instant involvement. Behind each sitter, in both portraits, is a window open to a clear blue sky and a wrought iron balcony between two heavy curtains tied with thick ropes. In the *Self-Portrait,* Kahlo has an airplane flying overhead and to her left a Solomonic column where an alarm clock rests, airplane and clock creating the pun "Time Flies." As *Portrait of a Woman in White* is unfinished, it is difficult to say how Kahlo might have intended to complete the work.

Although the catalogue raisonné authors believed in the work, there remained the gnawing questions: why did Lola Álvarez Bravo not exhibit it? Or did she? At 77 years of age, she could not remember if she had; files of her defunct gallery were lost; and there was apparently no record of the painting ever having existed. In the end, the authors agreed that if she did not exhibit it, it was likely because it was unfinished. A year after the catalogue raisonné was published, the authors received a welcome surprise that confirmed their belief in the *Woman in White's* authenticity and that it had, indeed, belonged to Lola Álvarez Bravo. Mariana Amor, the new Director of the Galería de Arte Mexicano, brought to their attention a catalogue, obviously unknown to them, from a collective exhibition presented at Mexico's Universidad Autónoma de México in 1955, the year after Kahlo's death. The catalogue checklist, for which Diego Rivera wrote the introduction, read, "No. 5, Portrait, oil on canvas, Col. Lola Álvarez Bravo."[19]

FIGURE 11. A (left). Detail of Figure 3, ***Woman in White.*** **11B** (right). Detail, ***Portrait of Miriam Penansky.***

It was interesting for the purpose of this study to compare the *Woman in White* with the Penansky portrait, so that once and for all any doubt about either work could be discarded **(FIGS. 11A and B).** The comparison proved fruitful, as we were not only able to discover technical similarities shared by both portraits, but also similar "fingerprint" details, which confirmed our belief in the authenticity of *both* works.

Information gleaned from the restoration of the two works allowed close comparison. *Woman in White* was restored in New York in 1989 and the Penansky portrait in 2013 in Amsterdam. Neither painting had ever been varnished, and both were cleaned to remove only superficial dirt and grime **(FIG. 12).** However, *Miriam* was covered with an exceptionally thick, dark dirt layer indicating it had been kept in a very polluted environment for some time.

FIGURE 12. ***Portrait of Miriam Penansky,*** shown partially cleaned a prior to restoration.

The Penansky portrait is on a cotton duck canvas support with a Panama weave that has a double warp and double twisted weft threads; warp count 13–14 cm, weft count 9–10. The left tacking edge of the canvas is selvedge, stretched and tacked onto a

18 Raquel Tibol, *Frida Kahlo en su luz más íntima* (México, D.F., Lumen, 2005), pp. 252–56. The portrait first came to our attention when Lola Álvarez Bravo (LAB), was attempting to sell it. When interviewed by the authors of the catalogue raisonné, LAB acknowledged as much. In her review, Tibol also wrote that when she called LAB to inquire about the *Portrait,* on 5 April, 1989, the photographer replied: "I never had that painting in my house, I never photographed it and from the photographs I have seen, I also believe it is not [a genuine] Frida." LAB had been close with Kahlo and Rivera since the early days of their marriage. In 1929, she began photographing Kahlo's paintings and continued to do so until 1952. When Kahlo died, Rivera called LAB to prepare Kahlo's body and to take her official postmortem photographic portraits, and make her ready for viewing in an open casket at the Palacio de Bellas Artes. At the time, LAB owned three works by Kahlo, the *Portrait of a Woman in White,* c. 1929; a *Self-Portrait Drawing,* 1937; and a page from Kahlo's Diary, the ink and watercolor *Señor Coyote,* 1953. In 1967, she lent the last two to *Frida Kahlo, acompañada de siete pintoras,* an exhibition in Mexico City's Museo de Arte Moderno. In the catalogue, the two works are documented as no. 2 and no. 32, respectively. In the 1930s, LAB owned a gallery where Kahlo's paintings were for sale; Kahlo's last exhibition, the year before her death, was held there. See in *Lola Álvarez Bravo and the Photography of an Era* (México: CONACULTA, 2012), p. 026, a photograph from 1937, of a collective show in the gallery where three paintings by Kahlo hang on the left wall: *My Nurse and I,* 1937, *My Grandparents, My Parents and I,* 1936, and *Me and My Doll,* 1937.

19 See: *Homenaje a 5 pintores mexicanos desaparecidos,* Museo de la Ciudad Universitaria, Facultad Arquitectura, 1955.

simple handmade wooden stretcher with wood bars that is original to the painting. Simple scribing, indicating the cutting points for the corner joints, is visible at each corner. No keys are present. *Woman in White* is on a similar double warp and weft Panama weave canvas of similar weight and weave count, though its canvas has three tell-tale blue warp threads near each of the two selvedges, indicating it is from a different source than the Penansky canvas. Even though *Woman in White* is now on a modern stretcher, cracks in the paint indicate that it was originally on a stretcher of similar width to the Penansky portrait.

FIGURE 13. Detail of the signature on upper left, ***Portrait of Miriam Penansky.***

Both canvases were prepared with a white ground; *Woman in White,* however, is unfinished, with areas of ground left unpainted, which explains why it is neither signed nor dated. The Penansky portrait is signed and dated, "FRiEDA KAHLO. AGOSTO 1929." **(FIG. 13),** all upper case except for the "i". Kahlo's signature varied over the years. Although her given name was spelled Frieda, in the original German, into her young adult years, she wrote it interchangeably with Frida, the Spanish version. In her *Self-Portrait,* 1926 as well as in the *Portrait of Rosita,* 1928, and the *Portraits of Salvadora and Herminia,* 1928, she signed "FRIDA KAHLO" in a stylized Art Deco signature (again upper case). However, the *Portrait of Alicia Galant,* painted between 1926 and 1928, is signed "Frida Kahlo," on the verso, in handwriting. Although she used Frieda to sign her youthful letters and those written immediately after her marriage to Rivera, she dropped Frieda from all paintings beginning in 1930. Some are signed "F. Kahlo" or "Frida Kahlo" either in block letters or in handwriting. Once, and only once, in 1932, she signed the *Self-Portrait on the Borderline* "CARMEN RIVERA," using her middle name to distract from her German ancestry, as Hitler was coming into power.

The paint application on both portraits is similar. With only low impasto, different areas of color are placed next to each other with little overlapping.

> "Hale introduced his sister-in-law, Miriam, to Frida Kahlo within one year of Miriam's move to Mexico. Kahlo painted her portrait shortly thereafter."

Distinct similarities can also be noted in the blush of the cheeks and dark shading around the eyes. In both, the hair is simply blocked in, followed by the addition of spare highlights and curls; the eyebrows are painted with similar short dabs; and the lips, first filled in, are finished with a strong dark dividing line and then touched up with flesh-colored paint that defines the final contours.

Apart from one being a finished piece and the other not, there is another major difference between the two paintings that may at first be recognized only as the difference in degrees of canvas texture. Under the Penansky portrait, over the first of two eventual ground layers, is another, now hidden, quarter-length portrait of a woman. In relation to the Penansky portrait, it is upside down, rotated 180 degrees **(FIGS. 14A and B).** Information gathered

FIGURE 14. A (left). X-radiograph showing the inverted underlying portrait. **B** (right). Schematic outline of the underlying portrait positioned over the inverted *Portrait of Miriam Penansky.*

ERRATUM

Figure 14A on p. 29 of Volume 14, no. 3 was incorrect ("Two Frida Kahlo Portraits: One Found, One Confirmed"). What should have been an x-radiograph of the newly discovered portrait was inadvertently replaced with a transmitted light infra-red digital photograph. Below are the correct images and caption for Figures 14A & B. We have placed the transmitted light infra-red digital photograph (previously published as 14A) in-between the two images in order to show additional aspects of the under layers of the portrait revealed by the different technical processes. Information from these images as well as the infra-red reflectogram shown in Figure 15, p. 30, were used to make the schematic outline in Figure 14B.

FIGURE 14A (far left). **X-radiograph showing the inverted underlying portrait.**
FIGURE 14B (far right). **Schematic outline of the underlying portrait positioned over the inverted *Portrait of Miriam Penansky*. In the center is the transmitted light infra-red digital photograph.**

by radiography, infrared reflectography (IRR) and transmitted infrared digital photography (IRD) exposes various aspects of the underlying portrait suggesting that the underlying portrait was also finished. As opposed to Miriam Penansky, who wears purple and white, cross-sections of paint samples and colors seen in open cracks and at the edges of the canvas suggest that the first sitter is wearing a predominantly green colored blouse with lace trim and short puffed sleeves. She also wears a necklace with large beads or stones. An inscription with the dimensions of the painting and an indecipherable word, upside down on the back of the lower rail of the stretcher, undoubtedly relates to the concealed portrait.

FIGURE 15. Infra-red reflectogram of the ***Portrait of Miriam Penansky*** showing a shelf and vase with a flower not visible in the original composition.

A second white ground, applied to cover the underlying portrait, reduces our reading of it with IRR, but, conversely, it helps our IRR reading by revealing a second surprise, sketched and partially painted motifs that may have been intended as part of the Penansky portrait. Behind Miriam Penansky, there was once a small shelf, and part of its horizontal plank was changed into the top rail of the yellow chair **(FIG. 15).** On the left side of the shelf had stood a slender vase containing a single flower, and to the left and right of the portrait, partially behind Penansky, are shapes that may indicate other objects also sitting on the shelf. Once seen via IRR imaging, the impasto and color of these motifs becomes slightly recognizable with the naked eye.

From the colors visible in paint cracks, it appears that the vase with the flower was actually completed. It is more difficult to say whether the shelf and other compositional elements were fully painted as well or only sketched. It is also difficult to know whether the shelf and vase were originally behind the sitter or if they belonged, with other unidentifiable motifs, to yet another independent composition, also abandoned in favor of the Penansky portrait. However, in the IRR it is clear that the chair stiles are painted directly over the shelf. There is also brushwork and a color shift in the background to the left and right of both stiles that indicate it may have been a change of mind by Kahlo as she painted Miriam Penansky, simplifying the composition by removing the shelf and vase and adding the chair after the portrait was completed. One day, we may discover the answers to these new questions.

"The Penansky portrait is signed and dated, 'FRiEDA KAHLO. AGOSTO 1929 all upper case except for the 'i'. Kahlo's signature varied over the years. Although her given name was spelled Frieda, in the original German, into her young adult years, she wrote it interchangeably with Frida, the Spanish version."

Every work of art is a universe, and as with every universe, it has things that are obvious, things that are less clear, and many more that will remain a mystery. In this brief essay we have pieced together a puzzle where each component adds to our knowledge about the *Portrait of Miriam Penansky* and the *Portrait of a Woman in White,* and, ultimately, the oeuvre of Frida Kahlo. The provenance of each of these works and the technical and stylistic analysis – the physical properties and materials and the handling of line and paint – confirm their authenticity. What we were unable to do, however — something no one can do — is convey the emotional charge that Kahlo left in each painting, which initially drew us in the first place. This is the essence of what is always genuine and unique, that which cannot be forged.

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Meet the Art Advisory Council

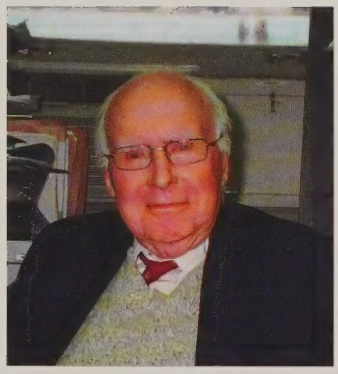
Editor's Note: With the following article, *IFAR Journal* launches a series of conversations with members of its Art Advisory Council. As an educational and research organization founded by scholars, IFAR has benefited from the expertise of its distinguished Council members over the years, including such art historical giants as: the late Julius Held, Michael Jaffé, Horst Janson, Charles Sterling, Donald Posner, Kirk Varnedoe, José Lopez-Rey, Jean Adhémar, Féderico Zeri, Sydney Freedberg, H. Harvard Arnason, Lloyd Goodrich, Harry Bober, and John Rewald, among many others. Several of these Council members also served on IFAR's Board of Directors. We thought it time to highlight our Council, and we begin with the current "dean" of Art Council members, Egbert Haverkamp-Begemann, the noted specialist in Dutch and Flemish art and Professor Emeritus at the Institute of Fine Arts, New York University, who joined the Council in 1970. He is interviewed by IFAR Board member, Virgilia P. Klein, who will be conducting many of the interviews. Next in the series will be the renowned Picasso biographer, John Richardson.

A Conversation
With
Egbert Haverkamp-Begemann

VIRGILIA P. KLEIN*

I was greeted warmly by Professor Egbert Haverkamp-Begemann this spring at The Institute of Fine Arts in New York, where he had announced enthusiastically the celebration of his 90th birthday a few days earlier. Although he was using a cane, which he quickly explained was the result of a broken hip he had suffered a few months before, his noticeable energy, vigor and enthusiasm belied his age. We settled into his office, which he has had since he began teaching at the Institute thirty-five years ago. He holds the title of the John Langeloth Loeb Professor Emeritus in the History of Art. Among his many other credentials, he was also the Coordinating Scholar for the Robert Lehman Collection Scholarly Catalogue. As he was one of the first art historians to join IFAR's Art Advisory Council, I wanted to ask him some questions about his long and distinguished career.

VIRGILIA P. KLEIN (VK): Professor Begemann, what was your early life in The Netherlands like and when did art become a major interest?



EGBERT HAVERKAMP-BEGEMANN (EH-B): I spent my early years in the Netherlands after having been born near Amsterdam, and I developed my love of art at age twelve from a close family friend. I did my undergraduate work in Amsterdam and received my Ph.D. at Utrecht University, where I studied under Jan van Jelder, whom I consider to be one of the greatest art historians of the 20th century. My first job was at the Boijmans Museum in Rotterdam, where I was made the Curator of Drawings and the de facto Curator of Paintings, as the director of the museum had

*Virgilia P. Klein is a member of IFAR's Board of Directors and the former director of IFAR's Art Authentication Research Service.

no time to spend with them. The drawings were entirely under my supervision and it was a first-rate collection.

VK: After coming to the U.S. from your position at the Boijmans Museum, where did you work initially?

EH-B: I left the Netherlands in January 1959 for Princeton and The Institute for Advanced Study, where I was a Fellow for a short time. I then went to Harvard, where I started as the substitute teacher for the renowned drawings expert, Agnes Mongan. At the same time, I taught a class for the noted Dutch paintings and drawings scholar, Seymour Slive, who was on a leave of absence. The following sixteen years were spent at Yale where I divided my time between teaching and curatorial responsibilities.

VK: From Yale, you came to New York and assumed a number of important positions over the years. What were they?

EH-B: I taught 16th to 18th century Netherlandish painting to graduate students at the Institute of Fine Arts. I have always believed in the important connection between the teaching of art history in a classroom and directly observing art in major collections. At the Institute, I requested a curatorship at the Metropolitan Museum and became an Adjunct Curator of Dutch art there for two years, fulfilling my wish to combine teaching with museum work. I taught at the Institute for close to thirty years until my retirement about ten years ago.

VK: Most academics would have been happy to retire then, but you did not. How did you spend your years after the Institute?

EH-B: I was asked to be the interim head of drawings at The Morgan Library & Museum for two years and also Academic Advisor of Scholarly Publications for the Robert Lehman Wing at the Metropolitan Museum. It was there that I coordinated the publication of the Lehman Collection's catalogue and was a contributor to the areas that dealt with Dutch and Flemish paintings and drawings. The fifteen volumes of the Lehman Collection were completed in 2012.

VK: You are known to have a "good eye," which in the art world identifies one who can make a decision about the attribution of a work of art by just looking at it carefully. Is having an "eye" something that one can learn?

EH-B: A good eye develops through scholarship and years of looking at art. I believe that there is an innate facility and talent to use the eyes as an instrument, and without this personal ability, one cannot really develop it. However, in order to write about theories in art, having an eye is not necessary.

VK: You have had a long and distinguished career. At age 90 are you ready to retire now, or are there still projects that tempt you?

EH-B: I am actually in the process of finishing a book on the drawings of Aelbert Cuyp, the 17th century Dutch landscape painter from Dordrecht. I inherited this project from Jan van Jelder, the art historian I mentioned earlier, who supervised my dissertation years ago in Utrecht. I hope to have this completed within three years, and the book will complement my other publications on Dutch art including *Rembrandt: The Night Watch* and *Hercules Seghers: The Complete Etchings.*

VK: Thank you for your time. I know you are on your way to Amsterdam for several months. I wish you "bon voyage." One final question. What has happened to your vast collection of art books that I have seen in your office over the years? Your bookshelves are nearly bare.

EH-B: I recently sold them all. Many thousands of them will become part of a new library that is being formed in New England. I am a little frustrated now, however, as I am in the habit of reaching over from my desk to the shelves for a book, say on Rembrandt, and am quite astonished that the book is no longer there!

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THE CASE OF THE "NOT RIGHT" BASQUIAT

JOSEPH A. PATELLA*

On April 2, 2013, the New York Court of Appeals put to rest a six-year-old case in which an art buyer charged that Christie's committed actual fraud in its sale of a painting purported to be a work by Jean-Michel Basquiat and later found to be a forgery. The Court of Appeals vindicated Christie's by denying the buyer's motion for leave to appeal, thus upholding the rulings of two lower courts which granted Christie's summary judgment on the buyer's fraud claims. As the trial court found, highly focused deposition testimony revealed a lack of evidence to support the buyer's broad-based accusations that the auction house had known beforehand that the painting was a fake and sold it anyway. The court reached this outcome despite accusations by the buyer that, prior to the sale of the painting, Christie's had been warned that the painting was "not right." Hence the question: why was such a warning found to be insufficient to justify trial on the merits?

A PROBLEM FOR THE OUT OF TIME CLAIMANT

Many claims alleging faulty authentication of art are decided and dismissed early on in the litigation process based on statute of limitations defenses or other narrow legal issues, such as laches, that deny the plaintiff her ultimate day in court – a trial. Advances in scholarship and technology may not reach a purchaser who safely tucks away the supposed centerpiece of her art collection, making it only available for private viewings. Accordingly, the purchaser of a painting could go many years, even decades, without learning that the attribution of the work has become suspect.

When questions of authenticity finally do come to light, whether through a public exhibition of the work or otherwise, the owner may no longer have recourse, due to the passage of time. For example, in New York, the statute of limitations for negligence claims expires three years after the date of the negligent act alleged to have caused injury, while claims sounding in breach of contract become stale six years from the time of purchase of the artwork. So a purchaser filing suit against the gallery or auction house that sold an allegedly forged work many years prior is usually met with a motion to dismiss the case on the ground that it is time-barred.

"When questions of authenticity finally do come to light, whether through a public exhibition of the work or otherwise, the owner may no longer have recourse, due to the passage of time. … But, what happens if the plaintiff/purchaser can find some way around the statute of limitations defense by, for example, alleging fraud?"

But, what happens if the plaintiff/purchaser can find some way around the statute of limitations defense by, for example, alleging fraud? What if

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the plaintiff/purchaser's creative allegations based on fraud or some other theory of liability put the gallery or auction house in a position where it has to devote time and legal expenses to defending an embarrassing claim in a full blown litigation that could end in a public trial and even appeals? The hard line that is initially taken in defending claims of authenticity may undergo a dramatic transformation when the defendant's motion to dismiss is denied and the case goes forward into depositions of the participants. Settlement leverage can then shift to the plaintiff/purchaser.

AUCTION HOUSE STANDS ITS GROUND

The much-discussed case of *Tony Shafrazi Gallery Inc. and Guido Orsi v. Christie's Inc.*[1] shows that a party defending an authentication claim need not lose its resolve to stand behind its legal defenses when the case goes beyond the motion to dismiss stage. In *Shafrazi*, Christie's sold a painting at its Contemporary Art Sale on February 23, 1990, describing it to be a work of the celebrated New York artist, Jean-Michael Basquiat **(FIG. 1).** As listed in Christie's auction catalogue, the consignor of the 1982 *Untitled* work purportedly acquired it directly from the artist, who had since died. Tony Shafrazi Gallery purchased the painting at Christie's 1990 auction and, a year later, sold the work to Italian art collector, Guido Orsi.

Not until 2006 – fifteen years later – did Orsi discover that there were issues with *Untitled's* authenticity. At that time, Gianni Mercurio, the curator of a Basquiat exhibition in Milan, contacted Orsi for a loan of the painting and another Basquiat in his collection. Mercurio discovered that neither work had a certificate of authenticity and requested that Orsi address this problem.

Orsi sought out the assistance of Tony Shafrazi, owner of the eponymous gallery that had sold the painting to Orsi as an authentic Basquiat. Shafrazi submitted both works to the Authentication

FIGURE 1. Fake Basquiat sold at auction in 1990 as authent

Committee of the Estate of Jean-Michel Basquiat, which had by then been founded by Basquiat's father, Gerard Basquiat ("G. Basquiat"), and which has since disbanded. In a letter dated October 5, 2006, the Basquiat Authentication Committee stated its opinion that *Untitled* was not a genuine Basquiat. In response to this determination, Orsi promptly sued Shafrazi Gallery in Milan in January 2007. Just as quickly, Orsi made peace with the Gallery and, together, they jointly sued Christie's in the New York County Supreme Court, Commercial Part.

Christie's, in its response, moved to dismiss the case on a variety of grounds. The court granted the motion in its entirety as to the Shafrazi Gallery since it had suffered no injury, having recovered its purchase price by reselling the painting to Orsi. Orsi's claims were a different matter. The court dismissed some, but not all, of them.

DOWNSTREAM PURCHASER

How was Orsi able to keep his case against Christie's alive? Beyond the facts recited above, the complaint contained a series of allegations that, as the court found, supported a possible claim of fraud against Christie's. Specifically, Orsi alleged

[1] Case No.112192/2007 (N.Y. Sup. Ct.,filed Sept. 7, 2007); *see, e.g.,* Noeleen G. Walder, "Suit Proceeds Against Christie's Auction House Over Fake Basquiat," *New York Law Journal,* November 14, 2008.

that, at the time of his purchase in 1991, Shafrazi had shown him the auction catalogue from Christie's 1990 sale, which represented the work to be an authentic Basquiat, and that Orsi relied on this representation in deciding to purchase *Untitled*. As previously discussed by M. Morabito-Rosewater and S. Flescher in this publication,[2] Christie's' motion to dismiss raised the interesting question of whether and under what circumstances a downstream, subsequent purchaser (Orsi), of whose existence Christie's was completely unaware, could maintain fraud claims against the auction house as seller. The court refused to dismiss these claims based on the specific facts presented – particularly, a subsequent sale fairly close in time to the initial purchase.[3] Said Judge Kornreich: "The nexus between Christie's and Orsi is not only close, but also limited and finite. Christie's may not have known of Orsi specifically, but he may be able to establish that it would or should have known that Shafrazi – particularly as a gallery – would resell the Painting to someone."[4] Though this issue was preserved for appeal at end of the case, it was not revisited due to the trial court's finding of summary judgment in Christie's favor, as discussed further below. Thus, Judge Kornreich's decision was ultimately the last word on this issue as it related to the facts presented.

In his complaint, Orsi further claimed that, shortly before the 1990 sale, G. Basquiat, who was then Administrator of his son's estate, and John Cheim, then director of the Robert Miller Gallery (and later a member of the Basquiat Authentication Committee), viewed the painting at Christie's and expressed "in words and in substance, that the Painting was a counterfeit and/or fake and requested that [Christie's] withdraw the Painting from Auction or take appropriate action."[5] Orsi alleged that Christie's ignored the information imparted by G. Basquiat and Cheim, and failed to withdraw *Untitled*, as it should have done. The complaint also faulted Christie's' due diligence with respect to the consignment of the painting, stating that Christie's "intentionally, negligently, and/or recklessly, failed to determine, or to take any steps whatsoever to determine, whether the Painting was authentic and whether the Painting was, in fact, acquired from [Basquiat]."[6] Since the statute of limitations for a fraud claim is two years from discovery of the fraud and Orsi did not receive the opinion from the Basquiat Authentication Committee until 2006, any fraud claims he might have were, so his allegations went, still alive. And so it was that Orsi's fraud claims against Christie's – that Christie's knew *Untitled* was a fake and acted with intent to defraud its bidders and induce the purchase of the painting – survived dismissal, allowing Orsi to drive the case into discovery and towards trial.

"Since the statute of limitations for a fraud claim is two years from *discovery* of the fraud and Orsi did not receive the opinion from the Basquiat Authentication Committee until 2006, any fraud claims he might have were, so his allegations went, still alive."

Orsi had purchased *Untitled* from Shafrazi Gallery for only $185,000, a fraction of today's going price for a genuine Basquiat. Had he sought only recovery of the amount paid, an early settlement would seem to have been likely. But, Orsi was going for a big win and did not stop there: he demanded consequential and incidental damages for being deprived of the rightful ownership of an authentic Basquiat which, the complaint alleged, would be worth over $2 million. Orsi even went a step further, seeking an additional $5 million in punitive damages, accusing Christie's of being dishonest

2 *IFAR Journal*, Vol. 12, no. 1, 2010 and Vol. 13, no. 3, 2012.

3 *See* Decision and Order of Justice Shirley Werner Kornreich entered on April 21, 2009.

4 *Id.* at 5.

5 First Amended Complaint at ¶14, filed on March 19, 2008.

6 First Amended Complaint at ¶16.

with the art buying public by deliberately misrepresenting the painting's authenticity. Faced with potential exposure of $7 million, Christie's dug in its heels and refused to settle.

Fraud claims like Orsi's can be difficult to defeat on a motion for summary judgment because of their highly factual nature. To establish a claim of fraud, a plaintiff/purchaser must show, by clear and convincing evidence, that the defendant/seller (1) made a representation it knew to be false, (2) with the intent to defraud, (3) upon which plaintiff reasonable relied, (4) causing damage or injury. For Christie's, the converse applied: to win summary judgment in its favor and thus avoid trial, Christie's would need to offer proof that *it did not know the painting was inauthentic and did not act with intent to defraud.* This was Christie's challenge.

But how could Christie's find such proof with facts and events almost 20 years old? The fate of the case would be decided based on deposition testimony of what the witnesses could recall of a transaction from two decades earlier.

A FATHER'S UNCERTAINTY

Orsi counted on two pivotal witnesses to support his fraud claim: Cheim *and* G. Basquiat. Despite Orsi's allegation that G. Basquiat and Cheim had informed Christie's that *Untitled* was counterfeit, Cheim's deposition testimony strayed in one very significant way. While Cheim recalled examining the painting with G. Basquiat and having some concerns about its authenticity, the two men then parted company and *only G. Basquiat went to Christie's to express these concerns.* Cheim never said a word.

Since Cheim's deposition testimony ended his utility as a witness on this point, G. Basquiat's testimony became the lynchpin for Orsi to establish that Christie's had been warned and did, in fact, *know* prior to the auction that *Untitled* was not a Basquiat.

Early on in the case, at the motion to dismiss stage, G. Basquiat had submitted an affidavit in support of Orsi's case. In his affidavit, G. Basquiat stated that he and Cheim were at a Christie's storage facility for approximately twenty-five minutes examining the painting along with three others, and had both agreed that *Untitled* "was not right" and that they could not say that the painting was authentic.[7] G. Basquiat's sworn affidavit also included his explanation that, following this viewing, he had gone to Christie's Park Avenue office and asked to speak with someone from the Contemporary Art Department. In his affidavit, G. Basquiat elaborated that a man with blond hair who was about forty years old came out to meet him, and he advised the man that *Untitled* "was in my opinion 'not right' and that I had some questions about it."

Against this backdrop, G. Basquiat provided two full days of sworn testimony at his deposition. A significant amount of this testimony addressed G. Basquiat's limited knowledge of his son's work during the period immediately following his son's death in 1988 when G. Basquiat acted as Administrator of his son's estate. At that time, G. Basquiat retained Christie's to catalogue and appraise the artwork in the estate and, in the process, he interacted with a number of Christie's personnel, including those who worked in the Contemporary Art Department. Yet, on the day G. Basquiat viewed the painting at Christie's, he spoke only to someone he had never met before and could not identify by name. G. Basquiat testified that he did not express his concerns about the painting to anyone else. The incident did not really stay with him; he had never thought about the work again until it was presented to the Basquiat Authentication Committee many years later.

Perhaps even more undermining to Orsi's case was G. Basquiat's testimony concerning his conversation with the unidentified blond man at Christie's. While G. Basquiat claimed that he did tell the man that, in his opinion, the painting was "not right," he said he had given no further explanation of his views. G. Basquiat did not express any particular concerns about *Untitled*, even though Orsi had so

[7] Affidavit of Gerard Basquiat sworn to December 5, 2007.

claimed in bringing suit. He did not say that the painting was a counterfeit or a fake; nor did he request that the painting be examined further or removed from the auction. G. Basquiat admitted that, back at the time of the viewing, he was "new in the art world" and, while he may have challenged the man "a little bit" with his single comment about the painting, he said it had not been his intention to question Christie's on a Basquiat that it planned to offer for sale. Indeed, G. Basquiat did not create the Basquiat Authentication Committee until six years later in 1994 because, as he testified, after his son's tragic death, he had "to learn a lot" about his son's work.

ORSI'S CASE DISSOLVES

There is, of course, an inherent incredibility to a claim that a major auction house or dealer would risk damaging its reputation so severely by *knowingly* selling a fake work intending to defraud its customers. So, it should be no surprise that additional facts that came to light during discovery further supported Christie's position that it did not actually know *Untitled* was fake and did not act with the intent to defraud. Three witnesses, all of whom were working at Christie's at the time of the sale, were deposed. Although none of them could specifically recall Christie's handling of the painting back in 1989, these witnesses were consistent in explaining that Christie's normally goes through a rigorous process to confirm the authenticity of consigned works.

In addition, Christie's included an image of *Untitled* in its auction catalogue which was widely distributed in advance of the auction. The painting was also on display at Christie's as part of a week-long, pre-sale public viewing. Yet, there is no record of anyone having expressed concerns about the work's authenticity.

The painting had been purchased by Shafrazi Gallery, which had previously conducted a number of exhibitions involving Basquiat paintings and drawings, including shows in January 1983, September 1986 and January 1989; an exhibition devoted to paintings of Basquiat and Andy Warhol in September 1985; and an exhibition of works by Basquiat and Simon Linke in May 1987. Shafrazi had been a close personal friend of the artist and had visited him at his apartment; on two or three occasions, Basquiat was in the midst of creating a new work. Shafrazi testified at his deposition that, prior to purchasing *Untitled*, he had examined its image in the auction catalogue and it had looked to him to be a typical Basquiat, having similarities with other works by the artist.

The evidence against Orsi also included a book entitled *Jean-Michel Basquiat,* which Shafrazi published in 1999, containing a comprehensive collection of the artist's works. The book features more than 200 works spanning Basquiat's career, *including Untitled.* Shafrazi testified that he sought and obtained G. Basquiat's permission to publish the book, which also contained essays from two other members of the Basquiat Authentication Committee. Despite all of these expert eyes on the painting and its image before and after Christie's sale, no one had voiced any concerns. By this point in the development of evidence, Christie's' sale of *Untitled* as a Basquiat was beginning to look like an innocent error, not even negligence, let alone a deliberate attempt to defraud the buying public.

"A SHADOWY SEMBLANCE OF AN ISSUE"

After the close of discovery, Christie's filed its motion for summary judgment on January 14, 2011. Justice Shirley Werner Kornreich, by Decision and Order dated November 22, 2011, granted Christie's motion. Judge Kornreich ruled that the deposition testimony and the record as a whole were insufficient to demonstrate any possibility that Christie's had actually known the Painting was inauthentic, or that it had intended to defraud Orsi:

> Under the proof presented, the trier of fact would have to assume that the anonymous and unidentified person with whom [G. Basquiat] spoke, over 20 years ago, worked for Christie's, had some authority, and conveyed what [G. Basquiat] told him to a person with authority at Christie's to show that Christie's

> had knowledge and intent. This proof, at most, creates only a shadowy semblance of an issue, insufficient on a summary judgment motion.[8]

As a result of Orsi's failure to raise a genuine issue of material fact concerning his fraud claims, Judge Kornreich dismissed the case.

"NOT RIGHT" FINALLY BECOMES AN ISSUE

On appeal, and for the first time, Orsi stressed that G. Basquiat's statement to a Christie's employee that the Painting was "not right," had special meaning in the art world and carried great weight as a signifier that a painting was inauthentic. At the very least, Orsi argued, G. Basquiat's phraseology should have put Christie's on inquiry notice, making it reckless with regard to the authenticity of the Painting. Perhaps, Orsi's "recklessness" argument, pinned to G. Basquiat's quixotic "not right" statement to a person he could not identify, would have been a better anchor for Orsi's case at the trial court level. Since Orsi had placed greater emphasis on the actual fraud claim, the appellate court saw no basis to overturn the trial court's finding of summary judgment in Christie's favor.

Hence, the Appellate Division, First Department followed Judge Kornreich's reasoning that Orsi's logic was too attenuated, and it affirmed her decision by Order dated December 27, 2012.[9] More recently, on April 2, 2013, the New York State Court of Appeals denied Orsi's motion for leave to appeal.[10]

"In spite of the ultimate outcome, the *Shafrazi* case may encourage other purchasers of art later found to be inauthentic (including downstream purchasers, since that issue was not reviewed or addressed in the appellate ruling) to bring fraud claims rather than or in addition to breach of warranty claims in order to extend the statute of limitations."

DEFEND AGAINST THE ARTFUL PLEADER

In spite of the ultimate outcome, the *Shafrazi* case may encourage other purchasers of art later found to be inauthentic (including downstream purchasers, since that issue was not reviewed or addressed in the appellate ruling) to bring fraud claims rather than or in addition to breach of warranty claims in order to extend the statute of limitations. The case should also instruct galleries and auction houses at risk of such accusations that settlement is not the only option in the event a court denies a motion to dismiss because of fraud allegations. While courts may give deference to pleadings with creative allegations of fraud, these claims may or may not be borne out by the evidence. In these circumstances – which are likely to recur – quickly turning to settlement mode without evaluating the actual facts is not advisable and may ultimately prove to be a strategy that is "not right."

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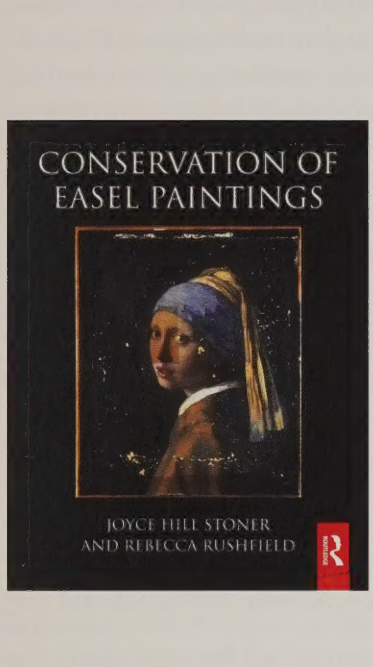
8 Decisions and Order of Justice Shirley Werner Kornreich entered on November 23, 2011.

9 *Tony Shafrazi Gallery Inc. v. Christie's Inc.*,101 A.D.3d 654, 955 N.Y.S.2d 875 (1st Dep't 2012).

10 *Tony Shafrazi Gallery Inc. v. Christie's Inc.*, 2013 WL 1300746 (2013).

THE EXPANDING WORLD OF EASEL PAINTING CONSERVATION

MARCO GRASSI*



Conservation of Easel Paintings

EDITED BY JOYCE HILL STONER AND REBECCA RUSHFIELD

Routledge, Oxford and New York, 2012, ISBN 978-0-7506-8199-5
Hardcover, 928 pages

The repair – or if one prefers, the conservation – of man-made artifacts is as old as civilization itself; the will to preserve has existed ever since objects were first fashioned by man, whether with artistic intent or not. The concept of the artifact as a 'work of art' eventually emerged in classical antiquity and, even as early as the fifth century BC, the historical record speaks of the care and attention devoted by artists to the damaged, and occasionally unfinished works of their predecessors. Inevitably, it was the artist who intervened as the ultimate arbiter of 'his' art (painter on paintings / sculptor on sculptures and so forth). In the context of this discussion, it is the pictorial arts that concern us. From the Renaissance onwards, not only the historical record but the works themselves have survived as testimony of such interventions: Raphael's *Madonna of the Goldfinch,* lovingly pieced together by Ridolfo del Ghirlandaio after it was nearly obliterated in the collapse of a Florentine palazzo, or the great Farnese ceiling by Annibale Carracci, saved by Carlo Maratta's painstaking consolidation, are just two examples of artistic preservation in its early modern guise.

And so it was, until the later eighteenth century when the figure of the 'restorer' first appeared in Venice in the person of Pietro Edwards, an Italian of English descent who, though not an artist himself, was put in charge of the Venetian Republic's vast artistic patrimony. Edwards not only wrote thoughtfully about conservation but also made sure that under his supervision the craft was practiced with restraint and respect. Not nearly so scrupulous, the Parisian practitioners Hacquin and Picault (both father-and-son firms) made their fame and fortune at the turn of the eighteenth century by developing reckless – and secret – techniques for removing painted surfaces from panel supports and transferring them to canvas. The radical practice was continued in the later nineteenth century by Luigi Cavenaghi in Paris and by the Sidorov family in Saint Petersburg. The significance of these and many other self-styled 'restorers' is that, for better or for worse, they represent the birth of a new profession, one whose history, if compared with that of other specialized pursuits, is hardly more than a century old.

*Marco Grassi is a paintings conservator in New York as well as a dealer, consultant and author. He is also a member of IFAR's Art Advisory Council.

Despite being such a latecomer, the restorer's profession has been hugely transformed in its short life. The most telling development may be the very way it describes itself: no longer *'restoration'* as before, but rather as *'conservation'*. Much ink has been spilled in parsing the difference between these two words. Since they are near-synonyms, it's been said, only half in jest, that it would be like a plumber styling himself a 'hydraulic technician'; either way he is likely to fix a leaky sink properly; the nomenclature is irrelevant. In this case, however, connotation is everything. Today's conservators – by the training they receive, the dedication they profess, the specialized tools and information that are available to them – approach the task of 'fixing' works of art as no restorer of the past did, or could have.

"... the restorer's profession has been hugely transformed in its short life. The most telling development may be the very way it describes itself: no longer *'restoration'* as before, but rather as *'conservation'*."

One has a measure of these changes by following the fascinating development of how, over the last century, the subject has been treated in print. The first pamphlets – for they were no more than that – do not differ much from the 'recipe books' for artists that have existed since antiquity and were often written by other artists such as Cennino Cennini, Giorgio Vasari, and Jean-Baptiste Oudry. A rare primitive example of the new genre is *De la Restauration des Tableaux* by one Jean (Giovanni) Bedotti, published in Paris in 1837, followed in 1846 by a similar booklet, *Die Restauration alter und schadhaft gewordener Gemälde* by Johannes Hampel of Weimar. Interestingly, the latter also treats paintings in fresco. A major contribution to the subject came in 1866 when, by remarkable coincidence, two Italian authors published comprehensive and authoritative compendiums on the practice of paintings restoration. One, Ulisse Forni, had been long employed by the Florentine galleries as a 'hands-on' practitioner; the other was Giovanni Secco-Suardo a nobleman from Bergamo who, after collecting a wealth of practical information from local craftsmen, added his own perceptive theoretical insights to a volume that is still of immense interest to this day. Secco-Suardo rather ungraciously referred to Forni in his introduction as a 'pupil', perhaps underlining an uncomfortable reality of contemporary Italy; that of a gentleman vis-à-vis a humble artisan. Forni's own indignant response was inserted as a flyleaf preceding *his* introduction. Despite this bickering, the two books are considered early milestones on the subject of painting restoration. Very little, except a thin and amateurish manual published in Amiens by the obscure Oscar Edmond Ris-Paquot separates the earlier Italian books from the great leap forward accomplished in America in the early 1920's at Harvard.

It was at that university's Fogg Museum, under the direction of Edward W. Forbes, that scientists, art historians and conservators for the first time focused their combined attention on the physical structure of paintings and the deterioration of their components. The critical analysis of these factors suggested a whole range of new procedures and techniques, only some of which found practical application. In fact, these were and remained for the most part research projects; the kind of endeavors that were particularly suited to the academic and institutional environments in which they were undertaken. Contemporary studies conducted at the Fogg's Research Institute by two other pioneers, R. J. Gettens and G. L. Stout, were published in books and periodicals initiating a body of specialized literature that has grown exponentially since then. Researchers in various European countries expanded the field's horizons: A. M. de Wild in Holland, Walter Gräff and Max Doerner in Munich, and Johannes Wilde in Vienna all contributed to this rapidly evolving new discipline. Interestingly, the discovery of King Tutankhamen's tomb prompted the British government's Department of Scientific and Industrial Research to carry out elaborate art-related conservation studies that were published in

1921 and 1923. Typical of the period's enchantment with technology – specifically with X-radiography – is Alan Burrough's 1938 *Art Criticism from the Laboratory.* Even a somewhat whimsical Italian scientist named Renato Mancia stuck in his oar by compiling a two-volume tome (dedicated to Mussolini – "invincible *restorer* of the nation's fortunes"!) that was surprisingly advanced in its description of X-ray and infrared imaging techniques.

At the threshold of the Second World War, the 'International Institute of Intellectual Co-operation', based in Paris, published the *Manual on the Conservation of Paintings.* The book's editorial board listed a who's who of distinguished contemporary specialists not only in the study but also in the practice of paintings conservation; it is as complete and careful a study of the subject as had appeared up to that date. Not surprisingly, in the aftermath of the war and the dreadful toll it exacted on Europe's art, the issue of conservation resonated with ever-increasing urgency. The formation of highly trained professionals became a priority and Italy led the way with Rome's Istituto Centrale del Restauro, the first of its kind. By the early 1950's the Institut du Patrimoine Artistique in Brussels, the Courtauld Institute in London and the Schweitzerishes Institut für Kunstwissenschaft in Zurich had training programs patterned on the Rome model. At the international level, ICCROM (International Center for the Study of the Preservation and Restoration of Cultural Property) was formed under the aegis of UNESCO. Regional and international conferences attended by members of professional associations such as IIC (International Institute of Conservation) have become recurring events where vast quantities of information are exchanged and later published. The world of conservation has now become a global enterprise attracting ever-increasing interest and funding … as well as debate. Whereas the 'cleaning controversy' that engulfed the National Gallery in London in the late 1940's remained essentially an intra-mural professional dispute, the Sistine Chapel cleaning project of the 1990's sparked a vitriolic international free-for-all.

EASEL PAINTINGS

A comprehensive and timely recent publication will serve a wide range of readers as a 'state of the art' progress report on one specific but very central area of conservation: *Conservation of Easel Paintings.* The handsomely produced and illustrated volume is sure to find a privileged place on the bookshelf of every professional conservation practitioner, but it will prove of immense use as well to curators, collectors, dealers, and virtually anyone with an interest in the visual arts. *Conservation of Easel Paintings* was conceived as a compendium of articles edited by two distinguished specialists: Joyce Hill Stoner, a professor at the University of Delaware, a long-time associate of the Winterthur graduate program in painting conservation practice, and also a member of IFAR's Art Advisory Council, and Rebecca Rushfield, a noted researcher and author specializing in the theory and history of conservation. Both have impressive credentials in their respective areas of interest and bring to this anthology a rare balance in the selection of topics and contributors.

The material is arranged in three general sections:

- technical art history, examination, documentation and scientific analysis
- methods and approaches for the treatment and care of easel paintings and
- preventive conservation, health and safety, outreach and professional organizations.

These sections are, in turn, subdivided into forty-nine chapters to which a total of eighty specialists have contributed either individually or in collaboration.

A comparison between the volume being reviewed and the 1940 *Manual on the Conservation of Easel Paintings* mentioned above is particularly revealing. Both are surveys that reflect the available information on the subject at the time they were compiled. Simply looking at their relative size (ca. 300 pages of the earlier vs. the more than 800 pages for the more recent publication) gives the measure of how the discipline has evolved: it now includes entirely new areas of concern, such as preventive care in

exhibiting, packing and storing paintings; health and safety; issues of documentation; each now meriting entire chapters. There is, moreover, a long list of new techniques and tools that were entirely unknown to the practitioner of the 1940's. The most remarkable of these innovations is a product of sophisticated chemical research and applies to that most sensitive of issues: the cleaning of paintings. An entirely new treatment approach has evolved as a result of experiments carried out in the 1980's by Richard Wolbers, Associate Professor in the Art Conservation Department of the University of Delaware. These studies and tests culminated in Wolbers' epochal *Cleaning of Paintings: Aqueous Methods* of 2001. As the title implies, Wolbers found that it was possible—with different chemical substances known as surfactants, enzymes and chelators—to exploit the pH properties of aqueous solutions for the removal of resinous and non-resinous materials from painted surfaces. The importance of the innovative technique is that it allows for the controlled and safe cleaning of paintings otherwise considered too sensitive to withstand intervention with conventional organic solvents.

WOOD SUPPORTS

Panel supports have played such an important role in the development of European painting, particularly in its earlier phase, that the subject has long concerned the conservation community. The very nature of wood: its vulnerability to parasites, hygroscopic sensitivity and inherent instability, have contributed to the natural, but serious, deterioration of much of our artistic patrimony. Paradoxically, as noted earlier, attempts to 'save' paintings on panel by transferring them to new supports, the earliest dating to the late eighteenth and continuing through the early twentieth century, often resulted in further damage, both physical and aesthetic.

One of the more interesting sections of *Conservation of Easel Paintings* is the chapter by Paul Ackroyd, Senior Conservator at the National Gallery in London. Ackroyd traces the history of panel treatments, from the early 'transfers' to the somewhat later and widespread use of 'cradles'. These

The handsomely produced and illustrated volume is sure to find a privileged place on the bookshelf of every professional conservation practitioner, but it will prove of immense use as well to curators, collectors, dealers, and virtually anyone with an interest in the visual arts.

were fixed or movable hardwood grids applied to the rear of panels, normally after these had been considerably reduced in thickness. The aim was to stabilize the surface in as perfect a flat plane as possible. The procedure was only occasionally successful, more often resulting in the appearance of cracks and other stress-related deformations. Contemporary conservation techniques seek to 'accompany' the inevitable, yet natural, movements of panels while at the same time gently controlling the extent of these movements. At all events, there has always been general agreement that a fundamental condition for insuring the stability of wood is a steady and relatively high degree of ambient humidity; consequently the book's articles dealing with climate control contain particularly useful information even for the non-professional.

If the treatment of wood supports has evolved significantly, recent research into their structure and, above all, their age, has afforded unexpected and very valuable knowledge. A long and important chapter entitled "History and use of panels or other rigid supports for easel paintings" is edited by Jørgen Wadum and Noëlle Streeton but authored by several specialists including Peter Klein, a scientist affiliated with the University of Hamburg. Klein is a recognized authority on the new and exciting discipline of dendrochronology, which has proved of immense significance in the study of Northern Renaissance painting (the woods used by the artists of those schools is easier to 'read' than poplar, the more commonly used support for Italian paintings). The technique is based on the comparison of a panel's growth rings with the patterns found

in similar woods of known age, allowing a determination of the 'felling' year of these woods with surprising accuracy. Modern computers, with their ability to create and share rapidly expanding databases, offer an ever-greater potential for assigning specific dates to an ever-greater number and variety of paintings.

CONSERVATION TOOLS

Another subject which would have baffled and excited a conservation professional of the 1940's is the stunning array of analytical tools now available not only for pure research but as aids in planning actual intervention strategies. The effectiveness and precision of spectrographic and chromatographic analysis has, in recent decades, been greatly enhanced, at the same time progressively reducing the quantities of sampling material needed and, in some cases, allowing entirely non-destructive testing. Of course, the equipment needed for such sophisticated inquiry is complex, expensive, difficult to manipulate and really only available in museums or other institutional facilities. On the other hand, the information developed now rapidly reaches the wider conservation community through a well-established network of inter-disciplinary publications and the Internet.

Conservation of Easel Paintings is an important and very useful book; its editors have marshaled a remarkable body of material submitted by specialists of proven expertise and reputation, all recognized leaders in their fields. The subjects treated encompass a wide spectrum ranging from the esoteric and complex formulations emanating from laboratory research to the practical nuts-and-bolts procedures of a manual craft. The three main parts of the book are subdivided into chapters that follow their themes clearly and succinctly. Moreover, each chapter is organized in distinct, easily identifiable paragraphs that facilitate the rapid referencing readers seek in such publications. Information that requires classification or comparison is arranged, when necessary, in easily comprehensible sidebars and graphs that accompany the main text. The illustrations, either photographic or schematic, are appropriate to the topic, plentiful and unusually well annotated. By and large the contributing authors and the editors have been successful in conveying even the more intricate technical concepts and procedures in prose that is accessible not only to the practiced professional but to the general reader as well. When topics require historical perspective, it is provided with firm documentation and an appropriate narrative; for example, the term "patina" cannot be fully understood without knowing how the concept has evolved over the last two centuries. The same is true of a treatment such as re-lining, a procedure that was first documented in the seventeenth century and continues to be practiced to this day.

The style, content and intent of *Conservation of Easel Paintings* is fundamentally expository. The wealth of information contained in the book is described and illustrated in as objective a manner as possible—objectivity is the overriding and informing design. The unmistakable impression derived even from a cursory consultation of its contents is that conservation of paintings is an activity guided by rational, verifiable, *objective* principles and practices. The paradox here is that professionals in the field commonly give quite an opposite description of their task. They will tell you that, in reality, conservation of paintings is a pursuit characterized by less certainty, less objectivity and less measurable accuracy than even they themselves would like to admit. Virtually every step of every intervention is conditioned by the compromises an operator is obliged to make according to an endless array of intimately personal and subjective choices — choices determined by that individual's talent, training, intuition, cultural background, and aesthetic sensibility. This should not be surprising because any activity involving the arts is inherently subjective. Conservation of paintings is, ultimately, an interpretative discipline—a philology not of the written but of the painted text.

Cesare Brandi, who founded the Istituto Centrale del Restauro in Rome in 1939 and for more than two decades was its director, is remembered as a brilliant and provocative art historian, aesthete

> " ... *any* activity involving the arts is inherently subjective. Conservation of paintings is, ultimately, an interpretative discipline – a philology not of the written but of the painted text."

and thinker. Very much in debt to the philosophy of idealism as advanced by Benedetto Croce at the beginning of the last century, Brandi elaborated a conceptual construct of conservation that pervaded his writings and guided the many prestigious projects assigned over the years to the Istituto. In 1963, his more important lectures and articles on the subject were collected in a publication entitled *Teoria del Restauro.* Although a number of the positions Brandi took on the restoration of monuments have since been challenged, his insistence on the centrality of *theory,* and the theoretical propositions on which the conservation of art rest, are as important and valid today as they were half a century ago. He states in his opening remarks: "Restoration constitutes that moment in methodology when a work of art is recognized as such, in its physical embodiment and in its twin aesthetic and historical polarity; the goal being its transmittal to the future". A compelling series of considerations flow from this lapidary statement; they delineate the intellectual and even moral dimension of the conservator's responsibilities. It is tempting to think that the *theory* of paintings conservation—as opposed to its *practice*—will one day merit a separate volume as a sequel to this excellent *Conservation of Easel Paintings.*

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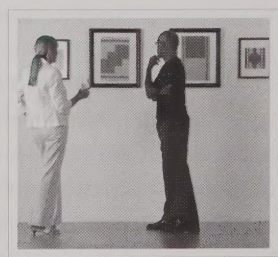

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STOLEN ART*

PAINTINGS

The following eleven paintings by nine Armenian artists were stolen from a private residence in Los Angeles, CA on July 26, 2013. *L13.782:

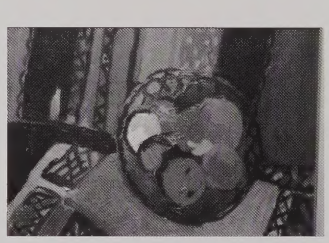
69. **SEDRAK ARAKELYAN** (1884-1982). ***Lake Sevan.*** Oil on canvas. 30.48 x 35.56 cm (12" x 14").

69

70. **MHER ABEGHYAN** (1909-1994). ***The Shepherd,*** 1977. Oil on canvas. 48.26 x 71.12 cm (19" x 28"). Signed/dated l/r.

70

MINAS AVETISYAN (1928-1975) (3 works):

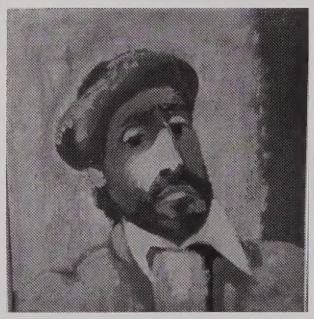


71

71. ***Basket of Fruit.*** Oil on canvas. 45.72 x 55.88 cm (18" x 22").

72

72. ***Mount Ararat.*** Oil on canvas. 45.72 x 50.8 cm (18" x 20").



73

73. ***Self Portrait.*** Oil on canvas. 55.88 x 55.88 cm (22" x 22").

74

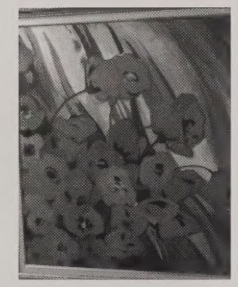
74. **HAROUTIUN GALENTZ** (1910-1967). ***Autumn Scene.*** Oil on canvas. 30.48 x 35.56 cm (12" x 14"). Signed l/l.

75. **HRACHYA HAGOPIAN.** ***Women Bathing.*** Oil on canvas. 60.96 x 76.2 cm (24" x 30").

75

**Numbering for the year 2012/2013 Cumulative Index of Stolen Art began with Vol. 14, nos. 1 and 2.*

76

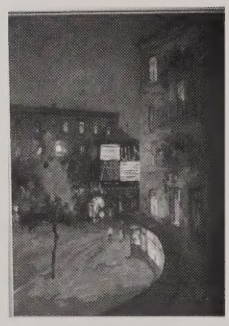


77

76. **SAMUEL HAMPARTZOUMIAN.** ***Untitled.*** Oil on canvas. 50.8 x 60.96 cm (20" x 24"). Signed l/l. *L13.782.

77. **BABKEN KOLOZIAN** (1909-1991). ***Red Poppies.*** Oil on canvas. 81.28 x 71.12 cm (32" x 28").

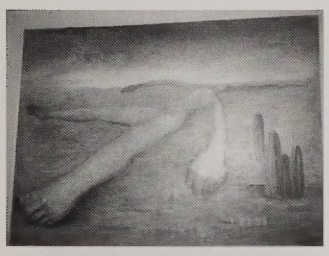
78



79

78. **FELIX YEGHIAZARIAN** (born 1947). ***The Lady.*** Oil on canvas. 81.28 x 71.12 cm (32" x 28"). Signed l/l.

79. **KHATCHATUR YESSAYEN** (1909-1977). ***Armenian Street Scene.*** Oil on canvas. 60.96 x 50.8 cm (24" x 20").

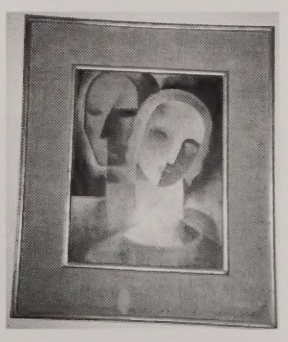


80

The following three works were stolen in Rio de Janeiro, Brazil on April 1, 2013. *L13.780:

80. **TARSILA DO AMARAL** (Brazilian, 1886-1973). ***Woman in the Sand.*** Oil on canvas. 80.01 x 59.99 cm (approx. 31 ½" x 23 ½").

82



81

ISMAEL NERY (Brazilian):

81. ***Heads.*** Oil on canvas. 49.99 x 40.01 cm (approx. 19 ¾" x 15 ¾").

82. ***Two People.*** Gouache. 49.99 x 30 cm (approx. 19 ¾" x 11 ¾").

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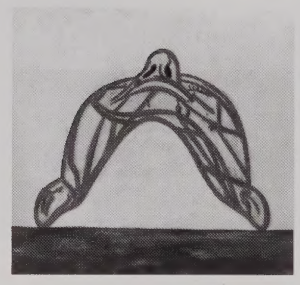
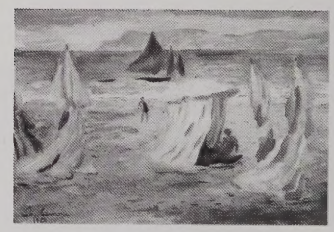
83. **TONY BEVAN** (English, born 1951). ***Horizon,*** 1997. Acrylic on canvas. 184.15 x 176.28 cm (approx. 72 ½" x 69 ½"). *L13.412. Stolen from a storage facility in London, England on January 1, 2004.



83

84. **CHARLES CAMOIN** (French, 1879-1965). ***Plage à St. Tropez,*** 1923. Oil on canvas. 27 x 40.01 cm (approx. 10 ½" x 15 ¾"). Signed/dated l/l. *L13.546. Stolen in Amsterdam, The Netherlands on January 11, 2011.



84

The following two works by **ADAM LUDE DÖRING** (German, born 1925) were stolen from a private residence in Hampshire, England on April 6, 2013. *L13.400:

85. ***Abstract Paintings x 2.*** 1977. Oil on board. 59.99 x 59.99 cm (approx. 23 ½" x 23 ½"). Signed on verso.

85

86. ***Abstract,*** 1978. Oil. 68.99 x 57 cm (approx. 27 ¼" x 22 ½"). Signed on verso.

86

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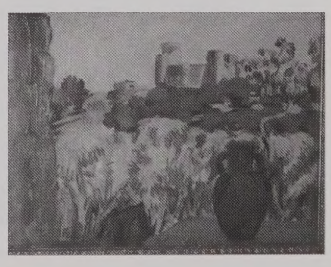
87. **DUNCAN GRANT** (English, 1885-1978). ***Palma in Sicily.*** Oil on board. 34.29 x 44.45 cm (13 ½" x 17 ½"). *L13.197. Stolen from a private residence in Frome, England between January 17, 2013 and January 25, 2013.



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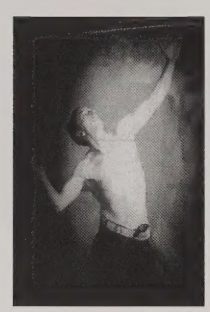

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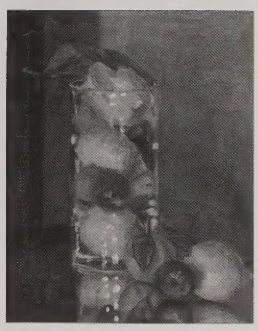

89

The following two paintings were stolen from a private residence in Boston, MA on April 2, 2013. *L13.541:

88. **R. H. IVES GAMMELL** (American, 1893-1981). ***The Handyman,*** 1938. Oil on masonite. 63.5 x 48.26 cm (25" x 19"). Signed/dated/inscribed l/l: R.h. Ives Gammell, 1938, to George Tracy/Xmas 1950.

89. **ANNE KILGUSS** (American, contemporary). ***Vase of Lemons,*** 2008. Oil on canvas. 60.96 x 45.72 cm (24" x 18").

90

91

90. **ALBERT KINDLER** (German, 1833-1876). ***Young Woman at a Kitchen Table.*** Oil on panel. 25.4 x 20.32 cm (10" x 8"). *L13.707. Stolen from a private residence in Edinburgh, Scotland on June 9, 2013.

91. **ASTRID KLEIN** (German, born 1951). ***Ohne Titel,*** 2006. Acrylic on canvas. 159.99 x 180.01 cm (approx. 63" x 70 ¾"). Signed on verso. *L13.465. Stolen from Art Cologne in Germany on June 16, 2006.

92

92. **JACOB HENRICUS MARIS** (Dutch, 1837-1899). ***Cityscape with Windmill,*** 1870. Oil on canvas. *L13.406. Stolen in Vught, The Netherlands on November 20, 1974.

93. **BARTOLOMÉ ESTEBAN MURILLO** (Spanish, 1617-1682). ***Madonna and Child,*** 1650. Oil on canvas. 139.7 x 88.9 cm (55" x 35"). *L13.745. Stolen from a church in Palm Beach, FL on June 26, 1979.

93

The following two works by **WOLFGANG PAALEN** (Mexican, 1905-1959) were stolen from a private residence in Mexico City on May 10, 2013. *L13.522:

94. ***La Seine 1,*** 1953. Oil. 33.5 x 55.5 cm (approx. 13 ¼" x 21 ¾").

95. ***La Seine 2,*** 1953. Oil. 33.5 x 55.5 cm (approx. 13 ¼" x 21 ¾").

95

94

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96. **CANDIDO PORTINARI** (Brazilian, 1903-1962). ***Fetiche,*** 1959. 27 x 18.01 cm (approx. 10 ½" x 7"). *L13.476. Stolen from a private residence in São Paulo, Brazil on April 15, 2013.

96

97. **PIERRE-PAUL PRUD'HON** (French, 1758-1823). ***Venus and Amor.*** Oil on canvas. 61.49 x 50.5 cm (approx. 24 ¼" x 19 ¾"). *L13.408. Stolen from an auction house in Stockholm, Sweden on April 11, 2013.

97

98. **EUGÈNE QUIGNOLOT** (1858-1918). ***Boy,*** 1880. Oil on canvas. 91.44 x 60.96 cm (36" x 24"). *L13.803. Stolen from a private residence in Auburn, CA on August 2, 2013.

98

99

99. **BERND RIBBECK** (German, born 1974). ***Abstract.*** Acrylic. 41.91 x 28.24 cm (approx. 16 ½" x 11 ¼"). *L13.723. Stolen from a gallery in New York City on June 11, 2013.

100. **NORMAN ROCKWELL** (American, 1894-1978). ***Sport,*** 1939. See color photo on inside back cover.

101

101. **C. ARNOLD SLADE** (American, 1909-2002). ***Study for Nubian Card Players,*** 1915. Oil on panel. 26.67 x 21.59 cm (10 ½" x 8 ½"). Signed in pencil l/r; estate stamp on verso. *L13.348. Stolen from a private residence in Boston, MA on April 2, 2013.

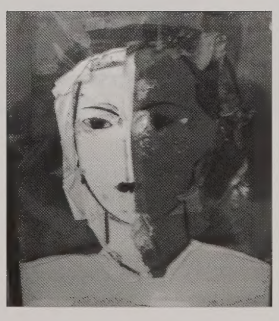
102

102. **UNKNOWN ARTIST** (Flemish, late 17th century). ***Landscape with People and Horses.*** Oil on canvas. 76 x 103 cm (approx. 30" x 40 ½"). *L13.386. Stolen from a private residence in Antwerp, Belgium on March 2, 2002.

The following two works by **MANOLO VALDES** (Spanish, born 1942) were stolen in transit between Maastricht, The Netherlands and Embrach, Switzerland on March 25, 2013. L13.378.

103

103. ***Dama,*** 2012. Oil on canvas. 228.6 x 170.21 cm (approx. 90" x 67"). Signed on verso.

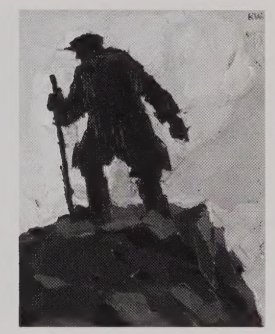


104

104. ***Retrato en blanco y rojo,*** 2012. Oil on canvas. 165.1 x 139.7 cm (65" x 55"). Signed on verso.

---

105. **KYFFIN WILLIAMS** (Welsh, 1918-2006). ***Farmer Looking for Sheep,*** 1979. Oil painting. 60.96 x 45.72 cm (24" x 18"). *L13.735. Stolen from a hotel in Pwllheli, Wales on March 29, 2013.



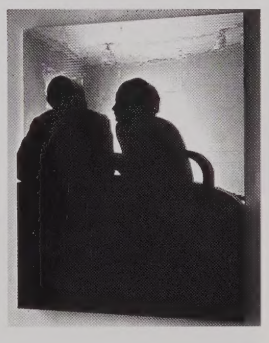
105

106. **SHANNON WOOD** (American, contemporary). ***Passageway Two,*** 2012. Watercolor on canvas. 50.8 x 60.96 cm (20" x 24"). *L13.611. Stolen from a gallery in Charleston, SC on May 29, 2013.

106

MIXED MEDIA

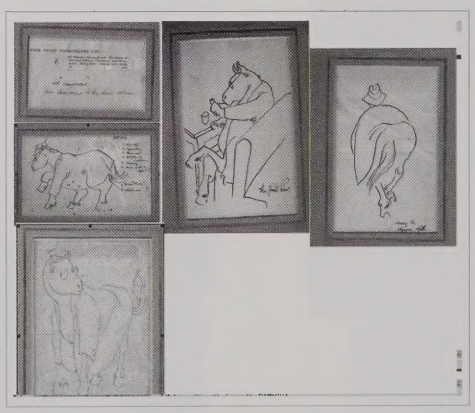
107. **IDELLE WEBER** (American, born 1932). ***Sunny,*** 1963. Plexiglass and mirror glass on a wood backing. 200.66 x 180.34 cm (79" x 71"). *L13.414. Stolen from a private residence in New York, NY on January 1, 2009.



107

WORKS ON PAPER

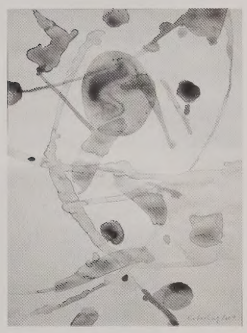
108. **MICHAEL AYRTON** (English, 1921-1975). ***Caricatures of Cecil Gray represented as a horse,*** 1940. Ink on paper. 65 x 42.01 cm (approx. 25 ½" x 16 ½"). Four separate cartoons – "Anatomy," "Front Bar," Back Bar" and "Leaving the Wigmore Hall" – plus a newspaper clipping, all mounted within one frame. *L13.426. Stolen from a nursing home in Reading, England on March 9, 2013.



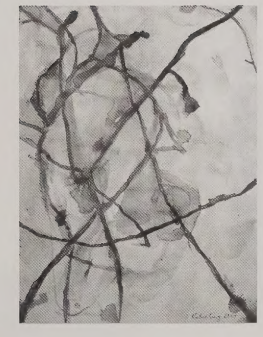
108

109

109. **COREY BARBA** (American, contemporary). ***Comic Military Poster,*** 1980. Watercolor, India ink, and gouache on paper. 16.99 x 11 cm (approx. 6 ¾" x 4 ¼"). The text at the top reads: " Power, Pride and Honor." The text at the bottom reads: "The True Shield of a Nation." *L13.739. Stolen at a middle school in Carlsbad, CA.



110



111

The following two works by **BERND KOBERLING** (German, born 1938) were stolen from a private residence in Stockholm, Sweden on April 8, 2013. *L13.375:

110. ***Translocation 27,*** 2009. Watercolor on paper.

111. ***Translocation 44.*** Watercolor on paper. 41 x 29.01 cm (approx. 16 ¼" x 11 ½").

112

112. **DIRK LANGENDIJK** (Dutch, 1748-1805). ***Battle of Castricum.*** Watercolor. 35.43 x 23.62 cm (90" x 60"). *L13.720. Stolen from a municipal office in Castricum, The Netherlands on October 1, 2008.

113. **CAMILLE PISSARRO** (French, 1830-1903). ***Rue à Mâcon,*** 1895. See color photo on inside back cover.

STOLEN ART ALERT®

PRINTS

The following two prints by **JACOB LAWRENCE** (American, 1917-2000) were among five works stolen from a private residence in Phoenix, AZ on January 1, 2011. *L13.296:

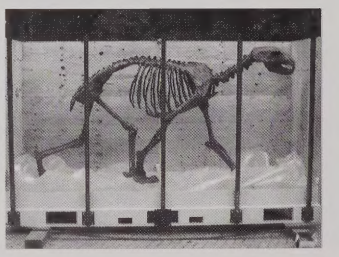
114. ***The Builders (The Family),*** 1974. See color photo on inside back cover.

115. ***Forward Together,*** 1997. Serigraph on paper. 64.77 x 101.6 cm (25 ½" x 40"). One of an edition of 150.

115

SCULPTURE

116. **MARK CORETH** (English, born 1958). ***Polar Bear Skeleton,*** 2013. Bronze. Life size. *L13.674. Stolen from the artist's residence in Tisbury, England on June 24, 2013.



116

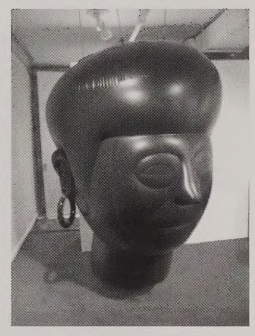
117. **SOMNATH HORE** (Indian, 1921-2006). ***The Three Divine Beings,*** 1998. Bronze. 32.99 x 27.99 x 13 cm (approx. 13" x 11" x 5"). *L13.721. Stolen from a gallery in New Delhi, India on June 22, 2013.

117

118. **ROBERT JAMES** LTD. (English, contemporary). ***Dodo.*** Hot cast bronze. 38.1 x 15.01 cm (approx. 15" x 6"). *L13.646. Stolen from a gallery in Bath, England on June 4, 2013.

118

119



120

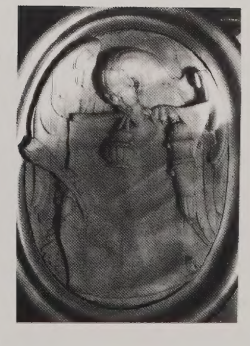
The following two sculptures by **DESI SANTIAGO** (American, born 1973). Were stolen from a gallery in New York City on October 2, 2012. *L13.593:

119. ***Desi Monster,*** 2010. Black vinyl. 213.36 x 76.2 x 60.96 cm (84" x 30" x 24").

120. ***Mami,*** 2010. Black vinyl with earrings set with black crystals. 86 x 57 x 57 cm (approx. 34" x 22 ½" x 22 ½").

121

121. **CODY SWANSON** (American, born 1985). ***Mother and Child.*** Bronze. H: 66.04 cm (26"). Ed no. 1/10. *L13.550. Stolen from public display in Eau Claire, WI on May 26, 2013.



122

122. **UNKNOWN ARTIST** (c. 1652-1719). ***Eagle, Symbol of St. John the Evangelist.*** White marble set in a gold-painted wood frame. 35 x 24.49 cm (approx. 13 ¾" x 9 ¾"). *L13.382. Stolen from the chapel in the Hospital Stuivenberg, Antwerp, Belgium on January 8, 2013.

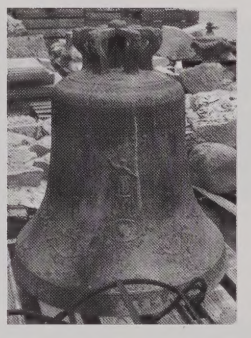
123. **UNKNOWN ARTIST.** ***Pomona.*** Marble. 127 x 43 x 40.01 cm (approx. 50" x 17" x 15 ¾"). *L13.539. Stolen from the garden at Sissinghurst Castle, Kent, England on May 27, 2013.

123

The following two works (Unknown Artist) were stolen from a storage yard in Los Angeles, CA on November 12, 2012. *L13.706:

124. ***Bell*** (17th century). Bronze. 91.44 x 83.82 cm (36" x 33").

125. ***Boar.*** Bronze. 121.92 x 203.2 x 88.9 cm (48" x 80" x 35").



124

125

ADVERTISEMENT

STILL MISSING

The Following Painting, Missing on April 26, 1990 in North Bergen, NJ and Published in *IFARreports,* Volume 16, Nos. 2/3, February/March 1995, is Still Missing:

Jean-Baptiste-Simeon Chardin (French, 1699-1779). ***Still Life with Apples, Pewter Urn and Water Glass,*** 1730. Oil. 48.3 x 60.9 cm. Signed l/r: Chardin. N94.442.1. The painting depicts the following: A stone table with a crack at the left side of the apron; a pewter urn with a domed lid in the middle of the table toward the back with a half-filled glass of water in front of it; three or four red apples at right; the table of a terracotta color and with a dark green background. The canvas has saber slashes (may be repaired) at upper right that were placed there by the Gestapo as the owner's relatives were boarding ship. In gratitude for saving their lives, the relatives later gave the painting to the owner's father.

STOLEN ART ALERT®

MISSING ART*

PAINTINGS

12

12. **ARNOLDUS BLOEMERS** (Dutch, 1792-1844). ***A Still Life of Flowers.*** Oil. 52.07 x 44.45 cm (20 ½" x 17 ½"). *L13.578. Missing from a private residence in New York City on June 6, 1990.

The following six paintings were missing from a church in Warsaw, Poland on August 1, 1944. *W13.18:

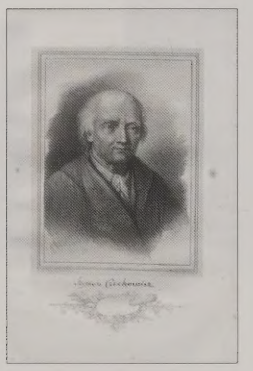
SZYMON CZECHOWITZ (Polish, 1689-1775).

13

13. ***Saint Anthony of Padua,*** 1750. Oil on canvas. 180.01 x 89.99 cm (approx. 70 ¾" x 35 ½").

14

14. ***Saint John Nepomucene.*** Oil on canvas. 180.01 x 89.99 cm (approx. 70 ¾" x 35 ½").



15

15. **RAFAL HADZIEWICZ** (Polish, 1803-1883). ***Epitaphial Portrait of Painter, Szyman Chechowitz,*** 1861. Oil on copper.

**Numbering for the year 2012/2013 Cumulative Index of Missing Art began with Vol. 14, nos. 1 and 2.*

STOLEN ART ALERT®

JERZY SIEMINGINOWSKI
(Polish, 1660-1711):

16. ***Guardian Angel.***
Oil on canvas. 219.99 x 132 cm
(approx. 86 ½" x 52").

16

17. ***Saint Bonaventura.*** Oil on canvas.
1981.99 x 127.01 cm (approx.
71 ½" x 54").

17

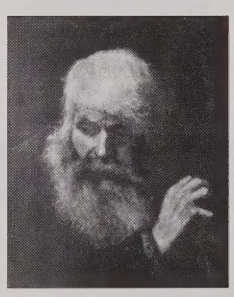
18. ***Saint Felix.*** Oil on canvas.
215.01 x 127 cm (approx. 84 ½" x 50").

18

---

19. NATALIA GONTCHAROVA
(Russian, 1881-1962). ***L'Electricité,***
1910. See color photo on inside
back cover.

20. MAURYCY GOTTLIEB (Polish,
1856-1879). ***Wanderer.*** 59.99 x 49 cm
(23.62 x 19.2"). *W13.13. Missing
in Kraków, Poland between 1939
and 1945.

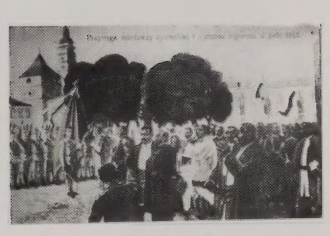


20

21. ABRAHAM HONDIUS
(Dutch, 1625-1691). ***Christ Appearing to the Magdalene as a Gardener (Noli Me Tangere),*** 1662. Oil on panel.
26.01 x 35 cm (approx. 10 ¼" x 13 ¾").
*W13.8. Missing from the State
Museum for Art and Cultural History,
Oldenburg, Germany on June 1, 1945.

21

MISSING ART (cont.)



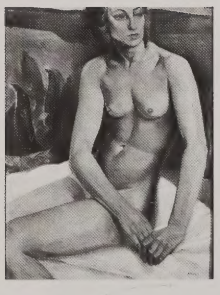
22

23

The following two paintings by **JAN KAZIMIERZ OLPINSKI** (Polish, 1875-1936) were missing in Zywiec, Poland on September 1, 1939. *W13.68:

22. ***Oath of Legionnaires on Zywiec Town Square, 25 August 1914,*** 1917. Oil on canvas. 143 x 280.01 cm (approx. 56" x 110 ¼"). Signed K. Olpinski / Zywiec 1917.

23. ***Wounded Legionnaire.*** Oil on canvas. Signed: K. Olpinski / Zywiec / 19[...].



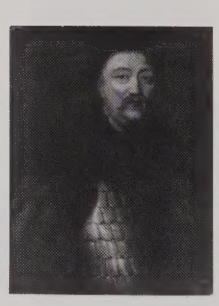
24

24. **LÉON NAVEZ** (Belgian, 1900-1967). ***Portrait of the Artist's Wife.*** Oil on canvas. *L13.266. Missing from a private residence in Vilvoorde, Belgium on January 19, 2013.

25

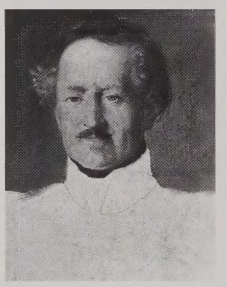
25. **ALAN RANKEL** (English, born 1952). ***Hollingworth Lake Estuary,*** 1997. Oil on canvas. 50.8 x 50.8 cm (20" x 20"). *L13.616. Missing from the County Hospital, Hereford, England on May 2, 2013 along with works on paper. See also items 33 and 34 below.

26. **DANIEL JERZY SCHULTZ** (Polish, 1615-1683). ***Portrait of King John III Sobieski,*** 1677. Oil on canvas. 78.99 x 68.99 cm (approx. 31" x 27 ¼"). *W13.19. Missing from the Royal Chapel in Gdansk, Poland on September 1, 1939.



26

27. **WLADYSLAW SIMON** (Polish). ***Portrait of a Man in Uniform,*** 1878. Oil on canvas. Signed u/r: WI.Son 1878. In white oil paint on verso of painting and of frame: Number KFMP 5638. *W13.14. Missing in Smigiel, Poland on October 25, 1944.



27

28. **GERSON WOJCIECH** (Polish, 1831-1901). ***Apotheosis of All Saints; Open Heaven.*** Oil on canvas. 288.01 x 230 cm (approx. 113 ¼" x 90 ½"). *W13.67. Missing from a church in Warsaw, Poland on September 1, 1939.

28

WORKS ON PAPER

The following two works were missing from the Schulhof Collection in Kings Point, Long Island, NY in March 2011. *L13.474:

29. **NORMAN LEWIS** (American, 1909-1979). ***Flower.*** Oil on paper.

29

30. **FRANK STELLA** (American, born 1936). ***Tuftonboro.*** See photo on inside back cover.

MISSING ART (cont.)

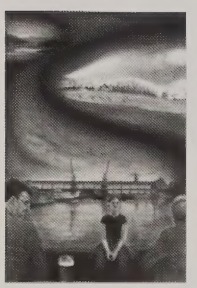
31

31. **BRUNO GOLLER** (German, 1901-1998). ***Die Zahl 2.*** Oil, gouache and pencil on cardboard. 83.49 x 64.01 cm (approx. 32 ¾" x 25"). Signed l/r. *L13.311. Missing from a storage facility in North Rhine – Westphalia, Germany on March 14, 2013.

32

32. **STANISLAW IGNAZY "WITKACY" WITKIEWICZ** (Polish, 1885-1939). ***Portrait of Major Tadeusz Nadratowski,*** 1927. Pastel on paper. Signed "l.l." in a circle and "T.B./ Ignacy Witkiewicz 1927//." *W.13.15. Missing in Grudziadz, Poland on September 1, 1939.

The following two works were missing from the County Hospital, Hereford, England on May 2, 2013. *L13.616. See also item 25 above:



33

33. **DANIEL STRINGER** (English, contemporary). ***Bristol at Helmshore,*** 1998. Oil on paper. 64.77 x 43.18 cm (25 ½" x 17".

34

34. **COLIN WILKIN** (English, contemporary). ***Hawthorn, Spencer's Meadow,*** 1999. Watercolor. 36.83 x 50.8 cm (14 ½" x 20").

MIXED MEDIA

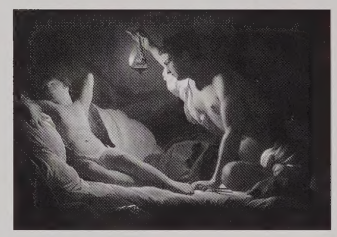
35

35. **JO BAER** (American, born 1929). ***Untitled.*** Paper collage. 15.24 x 36.2 cm (approx. 15 ¼" x 36"). *L13.654. Missing in transit between New York City and Venice, CA on June 8, 2013.

RECOVERED ART*

PAINTINGS

2. **PIERRE-HUBERT SUBLEYRAS** (French, 1699-1749). ***Cupid & Psyche.*** Oil on canvas. 127 x 188.49 cm (approx. 50" x 74 ¼"). *L13.221. Missing from storage in London, England on October 15, 2010. Recovered in London on May 31, 2013.

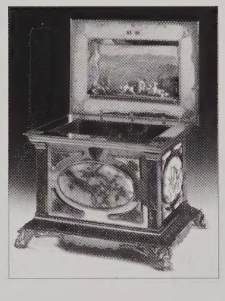


2

DECORATIVE ARTS

MISCELLANEOUS

3. **A. ANDREWS** (American, 19th century). ***Gold Rush-Era Jewelry Box,*** c. 1869-1878. Gold, gold-veined quartz, and a gold-plated interior. 17.78 x 22.86 x 17.78 cm (7" x 9" x 7"). Signed. *L13.71. Stolen from the Oakland Museum in California on January 9, 2013. Recovered by the police in Oakland on March 5, 2013.



3

NAVIGATIONAL INSTRUMENTS

4. **MARTINUS WEILER.** ***Astrolabe, 1590.*** Silvered brass. Diam: 170 mm. *L13.757. R1539. Stolen from Skokloster Castle in Sweden in 2005. Recovered with the help of The ALR in August 2013.

4

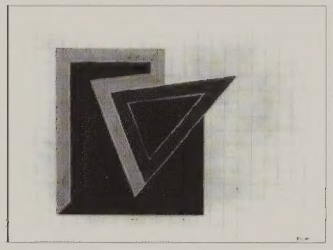
**Numbering for the year 2012/2013 Cumulative Index of Recovered Art began with Vol. 14, nos. 1 and 2.*

100

113

114

19



30

STOLEN ART

PAINTINGS

100. **NORMAN ROCKWELL** (American, 1894-1978). ***Sport,*** 1939. Oil on canvas. 27 ½" x 22 " (69.85 x 55.88 cm). Signed l/r. *L13.1030. Stolen from an art storage facility in Queens, New York on September 13, 2013.

WORKS ON PAPER

113. **CAMILLE PISSARRO** (French, 1830-1903). ***Rue à Mâcon,*** 1895. Pencil and watercolor on paper. 17.14 x 23.16 cm (approx. 6 ¾" x 9 ¼"). *L13.692. Stolen from a private residence in New York City on December 12, 2011.

PRINTS

114. **JACOB LAWRENCE** (American, 1917-2000). ***The Builders (The Family),*** 1974. Serigraph on paper. 86.66 x 65.53 cm (approx. 34" x 25 ¾"). Ed. no. 213/300. *L13.296. Stolen from a private residence in Phoenix, AZ on January 1, 2011. See also item no. 115 in this issue.

MISSING ART

PAINTINGS

19. **NATALIA GONTCHAROVA** (Russian, 1881-1962). ***L'Electricité,*** 1910. Oil on canvas. 124.99 x 103 cm (approx. 49 ¼" x 40 ½"). *L13.542. Missing from Château du Chenoy, Court-Saint-Etienne, Belgium on June 29, 1990.

WORKS ON PAPER

30. **FRANK STELLA** (American, born 1936). ***Tuftonboro.*** Watercolor on graph paper. *L13.474. Missing from the Schulhof Collection in Kings Point, Long Island, NY in March 2011.

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